



Lori A. Cox
Agency Director

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<http://alamedasocialservices.org>

August 18, 2014

Honorable Board of Supervisors
Administration Building
Oakland, CA 94612

Dear Board Members:

SUBJECT: Approval of two (2) new Standard Agreements with International Business Machines (IBM) for purchase of technology and services: 1) PureApplication Server, and 2) Electronic Forms Solutions.

RECOMMENDATION:

- A. Approve an increase in appropriation and revenues in the amount of \$1,372,719 as detailed in the attached Financial Recommendation.
- B. Approve a new Standard Agreement (Procurement Contract No. 10789) with International Business Machines Corp. (IBM) [Principal: Devin F. Brown, Client Executive, CA Public Sector; Location: Sacramento] in the amount of \$1,246,783.20 for the period of 9/23/2014 – 9/22/2017 for purchase and implementation of IBM's PureApplication Server SSIRS data warehouse system upgrade.
- C. Approve a new Standard Agreement (Procurement Contract No. 10790) with International Business Machines Corp. (IBM) [Principal: Devin F. Brown, Client Executive, CA Public Sector; Location: Sacramento] in the amount of \$125,935.88 for the period of 9/23/2014 – 9/22/2015 for purchase and implementation of IBM's Electronic Forms Solutions system.

SUMMARY/DISCUSSION:

The recommended purchases allows for replacement and upgrade of Social Services Agency's (SSA) SSIRS hardware and operating system, and implementation of more accessible electronic quarterly, semi-annual, and annual forms clients use to report changes in their benefit status. These upgrades and new services are based on a platform of technology, applications and services that is proprietary to IBM.

On September 30, 2008, your Board approved SSA's purchase of the SSIRS data warehouse, an integrated computer system whose purpose is to create interactionable links between multiple SSA managed programs such as CalWIN, Child Welfare Services/Case Management System (CWS/CMS), and In-Home Supportive Services (IHSS) but,

now due to aging equipment and heavy use by SSA workers SSIRS' hardware and operating systems infrastructure is in need of repair and component replacement. Upgrading the SSIRS infrastructure will provide SSA's staff with a faster, more reliable, and higher capacity system needed to manage caseloads and operations. An upgraded SSIRS system will also play a critical role in SSA's Medi-Cal and CalFresh outreach efforts by providing instantly available data and information about each customer. The Electronic Forms (E-Forms) system uses intelligent menu driven technology that not only pre-populates customer information; but also has calculation capability so that updated income information is accurately indicated. The E-form automatically alerts caseworkers of any changes to a customer's case information. This important feature serves as a "bookmark" for workers and helps reduce the chance of overlooking any new information provided by their customers. Together, an upgraded SSIRS and the E-Form technology will enhance communications to customers, improve customers' access to services, and help customers avoid potential benefit discontinuation with the incorporation of barcode technology as the communication link to CalWIN. SSA's IVR system contacts many of its customers because the deadline to submit their periodic documents is very near. Through a menu driven process, customers will have the option to instantly submit their documents electronically. CalWIN will acknowledge the receipt of those documents and allow benefit issuance to continue without interruption.

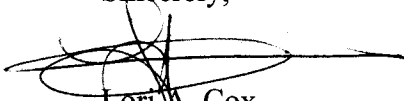
SELECTION CRITERIA/PROCESS:

SSA is recommending your Board's approval of the current technology and service purchase with IBM based on previous Board approvals. On September 30, 2008, your Board approved SSA's purchase of the SSIRS data warehouse system. Subsequently, your Board approved first, second, and third amendments on April 28, 2009 (File No. 24649, Item No. 45), November 3, 2009 (File No. 24649, Item No. 2), and May 4, 2010 (File No. 26127, Item No. 26) for additional enhancements of the IBM data warehouse – SSIRS. The current requests will provide the additional system upgrades that will allow SSA to improve its reliability and meet current and future demands of the Agency and its customers. SSA has obtained GSA-OAP approval of sole source procurement for both agreements and waiver of Small, Local Emerging Business (SLEB) policy requirements (waiver no. 3183 for PureApplication Systems and waiver no. 3185 for E-Forms).

FINANCING:

Funding for the requested purchases totaling \$1,372,719.08 for both agreements are included in the Agency's planned FY 2014-2015 budget. There are no additional net County costs.

Sincerely,



Lori A. Cox
Agency Director

A/C 10/7/14
#2
F29356

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of 9/23/2014, is by and between the County of Alameda, hereinafter referred to as the "County", and International Business Machines (IBM) Corporation, hereinafter referred to as the "Contractor".

WITNESSETH

Whereas, County desires to obtain PureApplication Server SSIRS data warehouse upgrade goods and services which are more fully described in Exhibit A hereto; and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to County; and

Now, therefore it is agreed that County does hereby retain Contractor to provide PureApplication Server SSIRS data warehouse upgrade goods and services, and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Definition of Services
Exhibit B	Payment Terms
Exhibit C	Insurance Requirements
Exhibit D	Debarment and Suspension Certification
Exhibit E	Contract Compliance Reporting Requirements
Exhibit F	IBM Customer Agreement
Exhibit G	IBM Agreement for Exchange of Confidential Information
Exhibit H	IBM International Passport Advantage Agreement
Exhibit I	IBM International Program License Agreement
Exhibit J	IBM International Passport Advantage Agreement Attachment for Appliance Services
Exhibit K	IBM International Passport Advantage Agreement, Attachment to Government Option
Exhibit O	Iran Contracting Act of 2010

The term of this Agreement shall be from September 23, 2014 through September 22, 2017.

The compensation payable to Contractor hereunder shall not exceed *one million two hundred forty-six thousand seven hundred eighty-three and twenty cents (\$1,246,783.20)* for the term of this Agreement.

C-10789

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF ALAMEDA
IBM Customer Number: 0924850
Enterprise Number: 0107000
IBM PPA Agreement: 155492
IBM PPA Site: 3053994

CONTRACTOR:
INTERNATIONAL BUSINESS
MACHINES (IBM) CORPORATION

By: Keith Carson
Signature

By: Devin Brown
Signature

Name: KEITH CARSON
(Printed)

Name: Devin F. Brown
(Printed)

Title: President of the Board of Supervisors

Title: Client Executive, CA Public Sector

Date: 9/5/14

Approved as to Form:

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By: Victoria Wu

By: Print Name VICTORIA WU
County Counsel Signature

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such amounts.

In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of County.

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the County determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, County may upon two week's notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments

2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda, its Board of

Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

3. **INSURANCE AND BOND:** Contractor shall at all times during the term of the Agreement with the County maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Contractor's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Contractor's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Contractor's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self-insurance shall be called upon to protect it as a named insured.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar

character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.

5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the Contractor nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
6. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.
 - b. **Accidents:** If a death, serious personal injury or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.
 - c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.

7. DEBARMENT AND SUSPENSION CERTIFICATION: (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).
 - a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
 - b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
8. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.
9. TRAVEL EXPENSES: Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.
10. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.
11. OWNERSHIP OF DOCUMENTS: Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the County and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, respecting in any way the subject matter of this Agreement.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In Contractor's contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the County the aforesaid assignment and license rights as to that Contractor's Documents and Materials. Contractor agrees to defend, indemnify and hold the County harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the County harmless from any claims for infringement of patent or copyright arising out of such selection. The County's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the County by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the

performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.

13. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
Social Services Agency – Contracts Office
2000 San Pablo Ave., 4th Floor
Oakland, CA 94612
Attn: Muang Saechao

To Contractor: IBM Corporation
2710 Gateway Oaks Drive
South Building, Suite 200
Sacramento, CA 95833
Attn: Devin F. Brown

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective

as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. **USE OF COUNTY PROPERTY:** Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
15. **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:** Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
 - a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by the County, Contractor shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.

16. **DRUG-FREE WORKPLACE:** Contractor and Contractor's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement
17. **AUDITS; ACCESS TO RECORDS:** The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the County, make such books and records available to the County for inspection at a location within County or Contractor shall pay to the County the reasonable, and necessary costs incurred by the County in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to County for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three (3)

years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by County), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County's last payment to Contractor under this Agreement.

19. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. **TERMINATION:** The County has and reserves the right to suspend, terminate or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its PureApplication Server goods and services shall not exceed \$1,246,783.20 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.
21. **SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION:**

Contractor has been approved by County to participate in contract without SLEB participation (*SLEB waiver no. 3183, attached*). As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the contract should change, Contractor may be required to immediately comply with the County's Small and Emerging Local Business provisions, including but not limited to:

- a. Contractor must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).
- b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- c. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the contract. Contractor shall ensure that their own certification status and/or that of

participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.

- d. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
- e. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

County will be under no obligation to pay contractor for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor- Controller's Office of Contract Compliance (OCC) located at 1221 Oak St., Rm. 249, Oakland, CA 94612 at Tel: (510) 891-5500, Fax: (510) 272-6502 or via E-mail at ACSLEBcompliance@acgov.org.

- 22. **FIRST SOURCE PROGRAM:** For contracts over \$100,000, Contractor shall provide County ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Contractor has available during the contract term before advertising to the general public.
- 23. **CHOICE OF LAW:** This Agreement shall be governed by the laws of the State of California.
- 24. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- 25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall

constitute the entire agreement between County and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

26. HEADINGS herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
27. ADVERTISING OR PUBLICITY: Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance.
28. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. ASSURANCE OF PERFORMANCE: If at any time County believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the Services as required by this Agreement, County may request from Contractor prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
30. SUBCONTRACTING/ASSIGNMENT: Contractor shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's prior written approval.

- c. Contractor shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, including, without limitation, Exhibit C. Contractor shall verify subcontractor's compliance.
 - d. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.
31. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.
32. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
33. **PATENT AND COPYRIGHT INDEMNITY:** Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County's prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.
- a. If Contractor is obligated to defend County pursuant to this Section 33 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with County's defense and/or settlement of such proceeding.

- b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.
 - c. Notwithstanding this Section 33, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
34. OTHER AGENCIES: Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.
35. EXTENSION: This agreement may be extended for two additional one year terms by mutual agreement of the County and the Contractor.
36. SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

[END OF GENERAL TERMS AND CONDITIONS]

ADDITIONAL PROVISIONS

1. Governing Terms

The General Terms and Conditions do not apply to this contract.

The IBM Customer Agreement, this Additional Provisions to the Standard Services Agreement – Contract No. 10789, the IBM Agreement for Exchange of Confidential Information, the IBM Passport Agreement, the IBM Passport Agreement Attachment for Appliance Services, and all other Exhibits to the Standard Services Agreement, Contract No. 10789 shall be the only terms governing the rights and obligations between IBM and the County.

In the event of any inconsistency among these documents, the following order of precedence shall apply:

- 1) The Additional Provisions to the Standard Services Agreement, Contract No. 10789
- 2) Exhibit A, Definition of Services
- 3) The Statement of Work, if any
- 4) Exhibit F, The IBM Customer Agreement
- 5) Exhibit G, The IBM Agreement for Exchange of Confidential Information
- 6) Exhibit H, The IBM International Passport Advantage Agreement
- 7) Exhibit J, The IBM International Passport Advantage Agreement, Attachment for Appliance Services
- 8) All other Exhibits to the Standard Services Agreement, Contract No. 10789

2. Additional Terms and Conditions to the IBM Customer Agreement (“The Agreement”)

- a. INDEPENDENT CONTRACTOR: No relationship of employer and employee is created by this Agreement; it being understood and agreed that IBM is an independent Contractor. IBM is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by IBM nor for any obligations or liabilities incurred by IBM.

IBM shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security,

disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

- b. **INDEMNIFICATION:** To the fullest extent permitted by law, IBM shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all third party claims for damages for which IBM is legally liable to that third party, and pay all costs, damages and attorneys' fees that a court finally awards or that are included in a settlement approved by IBM, provided that such third party claim is attributable to bodily injury, sickness, disease, death or to injury to or destruction of real property or tangible personal property, (collectively Liabilities") and further provide that the County shall promptly notify IBM in writing of the claim and allow IBM to control and will cooperate with IBM in the defense and any related settlement negotiations, except where such Liabilities are caused by any indemnitee or third party. The County may participate in the defense of any such claim at its own expense without relieving IBM of any obligation hereunder.
- c. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., IBM shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.
- d. **WORKERS' COMPENSATION:** IBM shall provide Workers' Compensation insurance, as applicable, at IBM's own cost and expense and further, neither the IBM nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
- e. **PAYMENT:** For services performed in accordance with this Agreement, payment shall be made to IBM as provided in Exhibit B hereto.
- f. **TRAVEL EXPENSES:** IBM shall not be allowed paid travel expenses unless set forth in this Agreement.
- g. **TAXES:** Payment of all applicable federal, state, and local taxes shall be the sole responsibility of IBM.

- h. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The IBM covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. IBM represents to and agrees with the County that to the best of its knowledge and belief IBM has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County. The parties agree that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential in accordance with the Agreement for Exchange of Confidential Information incorporated herein as Exhibit G.
- i. **NOTICES:** All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox.

Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. **Telex or facsimile transmission:** When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
Social Services Agency
2000 San Pablo Avenue 4th Floor
Oakland, California 94612
Attn: Muang Saechao

To IBM: IBM Corporation
2710 Gateway Oaks Drive
South Building, Suite 200
Sacramento, CA 95833
Attn: Devin Brown

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

- j. **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:** IBM assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
- k. **DRUG-FREE WORKPLACE:** IBM and IBM's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither IBM nor IBM's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If IBM or any employee of IBM is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the IBM within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
- l. **AUDITS; ACCESS TO RECORDS:** The IBM shall make available to the County, its authorized agents, officers, or employees, for examination any

and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by IBM.

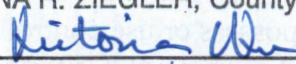
The IBM shall maintain full and adequate records in the performance of this Agreement. If such books and records are not kept and maintained by IBM within the County of Alameda, California, IBM shall, upon request of the County, make such books and records available to the County for inspection at a location within County. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the IBM shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and IBM with respect to this Agreement are closed, whichever is later. Nothing herein shall require IBM to disclosure cost, profit and overhead data, including both direct and indirect rates, markups, profit margins or confidential employee records and other trade secret information.

m. CHOICE OF LAW: This Agreement shall be governed by the laws of the State of California.

3. Exhibit E – Contract Compliance Reporting Requirements does not apply to this contract.

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By 

Print Name VICTORIA WU

County Counsel Signature: _____

SOCESA

Req. #/Date

6844



OFFICE OF ACQUISITION POLICY (OAP)

3183✓

MI

P.O. #

REQUEST FOR AUTHORIZATION TO WAIVE SLEB PROGRAM REQUIREMENTS*

For ALL Requests over \$3,000: Complete 1-9 & 10 below (First Source) if over \$100,000, sign and print your name on line 11, submit hard copy with supporting documentation for approval to GSA-OAP Business Outreach Officer, QIC 26021 AND email soft copy (PDF or Word) to nakia.neal@acgov.org. Upon approval, the procurement will be processed by GSA Purchasing.

For Requests over \$25,000, a SLEB Waiver Number will be issued. This number is required to enter a Procurement Contract in ALCOLINK. OAP will email signed approvals (as appropriate, with Waiver Number) and denials to Requesting Departments, GSA Purchasing and Auditor Controller Office of Contract Compliance (OCC).

1. Please check appropriate box and complete department/contact information below.

☒ Requesting Department ☐ GSA Purchasing managing the competitive process
Department: AAF Contact: Jerome Graham Email: jgraham@acgov.org Telephone #: 510.645.9358

2. Recommended Non-SLEB Vendor (Name): International Business Machines Corporation.

Street Address: PO Box 643600 City, State & Zip: Pittsburgh, PA 15264-3600

3. Total Contract Value: \$6,246,783.20 Contract Term Start Date: 9/23/14 End Date: 9/22/17 One-Time Purchase ☐

4. Procurement Type (check all appropriate boxes below):

☐ New Contract ☒ Renewal Contract ☒ Contract Amendment-Term ☒ Contract Amendment-Value ☐ Other:

5. Goods/Services Procurement Description: Hardware and Software System Upgrade and Maintenance Renewal for SSIRS Data Warehouse

6. Brief explanation of why goods/services are required: The Hardware and Software System Upgrade will allow SSA to meet the growing needs of our Business Intelligence Reporting and Operational Database Warehouse functions currently being provided to SSA staff and customers

7. Date Goods/Services Needed: 9/23/14

a. What are the consequences if the date goods/services needed is not met? Social Services will not retain the discount on the purchase price, and will not be able to enhance our ability create and analyze new and existing data in its Integrated Reporting system

8. Explanation of why the non-SLEB contractor/subcontractor (in #2 above) is being recommended and why they are unable to subcontract with a SLEB(s) for a minimum of 20%: Proprietary software being used is the same as what the system was implemented

9. Explain what attempts were made to locate a SLEB prime or subcontractor(s), including:

- ☐ Copies of bids received and/or detailed statement of efforts made to contact and negotiate with certified businesses, including list of SLEBs contacted, names of individuals, addresses, phone numbers, dates contacted and bid prices attached
- List of items or selected portions of work proposed to be performed by certified business in order to increase the likelihood of achieving the stated goal:
- Description of information provided to certified contractors/subcontractors regarding the plans, specifications and anticipated time schedule for portions of the work to be performed:

10. If the contract is over \$100,000, is the recommended vendor able to comply with the First Source Program?

Yes: ☐ No: ☐ If No, explain: n/a

11. Department Certification: I certify to the accuracy of the preceding statements,

Signature of Agency/Department Head or Designee or GSA Purchasing Manager (if GSA Purchasing managed the process)

Print Name

Date

OAP to complete below:

A. Request Approved: ☒ Waiver Valid Through 9/22/17

SLEB Waiver Number: 3183

Reason: Sole Source

B. Request Denied: ☐

Reason:

Approved by GSA-Office of Acquisition Policy (Required)

Date

*Procurements using Federal grant funds that prohibit geographical preferences require the Federal Grant Funds SLEB Waiver Request form to be completed and submitted for approval to the Auditor-Controller OCC prior to soliciting bids/proposals and awarding contracts. See the Waiver Request Procedure for Federal Grant Funds Procurements in UPM (in the online County Document Center) for further information or contact the OCC at (510) 891-5500.

EXHIBIT A

DEFINITION OF SERVICES

- I.** Contractor shall provide PureApplication Server SSIRS data warehouse upgrade goods and services with the specific requirements and deliverables set forth on this Exhibit A.
 - a. The Contractor's proposal may be relied upon to interpret this Contract and shall be applied in such a manner so that the obligations of the Contractor are to provide the County with the broadest scope of services for the best value.
- II.** IBM Responsibilities

PureStart Services

The PureStart Services is designed to get a better understanding of County requirements and current capabilities for delivering applications that handle critical business applications. With the information gathered, IBM will create a high-level deployment plan for deploying the applications on the PureApplication system. These services also include operations mentoring and training as well as post production support.

Deliverables: Statement of Work (SOW) plan (soft copy)

Activity 1 – Initial PureApplication configuration and setup

The purpose of this activity is to configure the PureApplication system for initial development. IBM will configure one (1) PureApplication System and perform the following:

- 1. Set up IP groups, two (2) cloud groups, and one (1) environment profile
- 2. Configure basic security

Deliverables: None

Delivery Method: On-site consultant

Estimated Effort: 8 Hours (1 Day)

Activity 2 – Preparing basic operations team

This activity is to assist County of Alameda in defining key roles for operating and management of the PureApplication System and filling them from the current organization. IBM will perform the following:

1. Understand IT management and support structure responsible for the application. Consider existing processes and County of Alameda's desired future state for these processes:
 - a. Application lifecycle process (e.g. development, testing, change management)
 - i. Change management processes
 1. Deployment process for applications
 2. Deployment process for infrastructure (i.e. fixes, and upgrades)
 3. Release promotion processes
 4. Tools for change management
 - ii. Continuous build and deployment automation
 1. Automation methods
 2. Tools
 - b. Maintenance and support processes (e.g. monitoring, problem identification and resolution, etc.).
 - i. Monitoring and escalation processes
 - ii. Historical IBM PMRs
 - iii. Known issues
 - iv. Known workarounds
 - c. Relevant compliance standards and policies and governance procedures (e.g. HIPPA, DOD compliant)
 - i. Industry specific standards
 - ii. Hardware compliance standards
 - iii. OS compliance standards
 - iv. Network compliance standards
 - v. Application compliance standards
 - vi. Data privacy
 - d. Organizations and roles participating in aforementioned processes. Will identify who is responsible for each of the following:
 - i. Middleware administration
 - ii. Application installation, configuration and deployment
 - iii. Application acceptance after testing
2. Understand IT organizations and processes responsible for managing the infrastructure supporting the application. Areas IBM will investigate include:
 - a. Maintaining and configuring of hardware, including PureApplication system
 - i. Identify persons responsible for system provisioning
 - ii. System provisioning processes, response times for provisioning new systems, releasing for use, (e.g, OS validation, NFS configuration)
 - iii. Management agents that need to be installed, such as backup

- b. Network administration
 - i. Identify persons responsible for network administration
 - ii. Network provisioning processes, response times for new subnet requests, FW rule changes, DNS administration
 - iii. Network Policies
- c. Security administration
 - i. Identify persons responsible for identity management
 - ii. Identity management processes, directory administration, user and group administration
 - iii. Encryption requirements, PKI certificate management, requirements
 - iv. Operating system security requirements
 - v. Middleware security requirements
- d. Monitoring of infrastructure, including tracking SLA compliance
 - i. Monitoring software used, agents that need to be installed
 - ii. Monitoring servers that need to be visible to the VMs on PureApplication System
 - iii. Monitoring software licensing constraints
- e. Maintaining scalability and resiliency: high availability, disaster recovery
 - i. Scope of scalability and resiliency capabilities – data center, hardware (i.e. IPAS), networks, cells, nodes, applications
- f. Incident management (problem identification, reporting, tracking, resolution)
 - i. Root Cause Analysis (RCA)
 - ii. Resolutions for the RCA
 - iii. Prioritization for findings and Resolutions
- g. Change management processes for various environments, average response times

- 3. Collaborate with County of Alameda on assigning its resources to relevant PureApplication management roles

Deliverables: None

Delivery Method: On-site consultant

Estimate Effort: 32 Hours (4 Days)

Activity 3 – PureApplication education and enablement

This activity is to train County of Alameda staff on how to properly use the PureApplication System. This on-site training will be delivered over 5 days and will cover the following topics:

1. PureApplication Basics: terminology, system components, system console, patterns overview
2. PureApplication Operations: monitoring, maintenance, backup/restore approaches, security, application onboarding and migrations, organization structure, DevOps concepts, PureApplication management best practices
3. Pattern Development

At the conclusion of training, assessment and planning questionnaires will be distributed to County of Alameda staff in preparation for Activity 4: Project Planning.

Deliverable: Training presentations (softcopy)

Delivery Method: On-site consultant

Estimate Effort: 40 Hours (1 Week)

Activity 4 – Project planning

The objective of this activity is to assist County of Alameda in defining an initial project to implement an application on the PureApplication system and developing a high-level project plan. IBM will perform the following:

1. Review County of Alameda responses from assessment and planning questionnaires
2. Review County of Alameda proposed solution design or assist County of Alameda in drafting a basic solution design
3. Assist County of Alameda in selecting an initial project
4. Create a high level deployment plan that will:
 - a. Set key milestones
 - b. Outline roles and responsibilities during the PureApplication implementation
 - i. List available resources from the client such as:
 1. Project manager
 2. Network architect
 3. Hardware architect
 4. System architect
 5. DB architect
 6. Application architect

- ii. Resource allocation hours in %
- c. Confirm project staff on-boarding requirements to provide access to County networks and facilities (VPNs, laptops, badges, background checks, regulatory training, etc)
- d. Define work locality requirements (on-site, remote, County site locations)
- e. Define a high level schedule for pattern development
- f. Identify resources needed to complete the pattern development
- g. Estimate project cost

Deliverable: High level deployment plan document (softcopy format)

Delivery Method: On-site consultant

Estimate Effort: 80 Hours (2 Weeks)

Activity 5 – Technical Account Manager Support

IBM will provide a Technical Account Manager (TAM) who will assist named callers with the operation of the IBM PureApplication System(s), for 60 days. Technical support will primarily be performed remotely. The TAM will perform the following tasks:

1. Continuity with pre-sales activity: will provide continuity with any POT/POC activities, ensuring a clear understanding of goals and expectations.
2. Establish support procedures: will educate client on the support process, tools, proactive measures, expectations and escalation process to ensure successful collaboration between IBM and the client. IBM will provide Named Callers guidance and assistance as detailed in attached SOAs with the intention of reducing or preventing problems from occurring in County's environment.
3. Serve as single point of contact for all support activities: this is in addition to the established support process. IBM will provide regular status updates, facilitate communications between County and IBM regarding problems, drive resolution of open issues, and provide bi-weekly management reports on activity.
4. Share best practices: IBM will facilitate County skills development related to the Pure Application product by sharing best practices and education

Deliverable: None

Delivery Method: Dedicated Remote Support

Duration: 60 Days (starting from Day 1 of engagement)

III. County of Alameda Responsibilities

The County of Alameda will designate a Project Manager who will be the focal point for the IBM communications relative to this project and will have the authority to act on behalf of the County in all matters regarding this project. The County Project Manager's responsibilities include:

1. Manage County of Alameda personnel and responsibilities for this project.
2. Serve as the interface between IBM and all County of Alameda departments participating in the project.
3. Administer the Change Order Request process with the IBM Project Manager, as needed.
4. Participate in project status meetings as reasonable and practical.
5. Obtain and provide information, data, and decisions within a reasonable amount of time, normally three (3) working days of IBM's request.
6. Resolve deviations from the estimated schedule, which are reasonably caused by County of Alameda.
7. Help resolve project issues and escalate issues within County of Alameda's organization, as necessary.
8. Review with the IBM Project Manager any invoice or billing requirements.

IV. Project Assumptions

1. Work will be performed at the County's Oakland, CA location. Some work may be performed remotely.
2. Work will be performed during normal business hours M-F 8:30am – 5:15pm, local time, except holidays.

V. Estimated Schedule

The Services start date will be determined by both parties upon execution of the SOW.

VI. Charges

PureStart Services will be conducted on a fixed price basis. The fixed price for performing the services defined in the SOW will be \$60,000. This fixed price is exclusive of any travel and living expenses, which are estimated at \$8,000.

VII. Contractor project team will consist of the following assigned Key Personnel, as applicable during the contract term:

Bob Ringo	PureApplication Technical Professional
Krishna (Prasad) Doddi	PureApplication Technical Professional
Installation Engineer	IBM PureApplication Installation Engineer
Consulting IT Specialist	IBM ISSW Services Specialist

Contractor agrees that it shall not transfer or reassign the individuals assigned as Key Personnel or substitute subcontractors without the express written agreement of County, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make a good faith effort to present to County an individual with greater or equal qualifications as a replacement subject to County's approval, which approval shall not be unreasonably withheld.

VIII. The approval of County to a requested change shall not release Contractor from its obligations under this Agreement.

EXHIBIT B-1

PAYMENT TERMS

1. County will use its best efforts to make payment to Contractor upon successful completion and acceptance of the services detailed in Exhibit A within thirty (30) days upon receipt and approval of invoice.
2. IBM will only invoice and County will only pay for services performed in accordance with the SOW. Invoices will be reviewed for approval by the County. Contractor shall submit all invoices and other documents as required to:

Social Services Agency
2000 San Pablo Ave., 4th Floor
Oakland, CA 94612
Attn: Jerome Graham
3. Total payment under the terms of this Agreement will not exceed the total amount of \$1,246,783.20. This cost includes all taxes and all other charges.
4. Upon award of this Agreement by County, County and Contractor shall forthwith jointly create a schedule governing the timely performance of Contractor's services hereunder. The agreed upon schedule shall be incorporated into this Agreement upon its adoption by the parties and thereafter Contractor shall perform all services under this Agreement in conformance with the schedule.
5. Upon notice to proceed from County, Contractor shall perform in accordance with all terms and conditions of this Agreement and Exhibits and Attachments.

EXHIBIT B-2**PRICE SCHEDULE**

Item / Part No.	Quantity	Unit Price	Extended Amount	Taxable
IBM Business Intelligence Pattern Install License + SW Subscription & Support 12 Months 001 D0NWGLL	1	\$1,900.94	\$1,900.94	No
IBM Business Intelligence Pattern Install Annual SW Subscription & Support Renewal 24 Months 002 E0DINLL	1	\$391.60	\$391.60	No
IBM Business Intelligence Pattern Install Annual SW Subscription & Support Renewal 36 Months 003 E0DINLL	1	\$403.34	\$403.34	No
IBM PureApplication System W2500-64m Appliance Install Appliance + Subscription and Support 12 Months 006 D14UILL County Requested Arrival Date: 23- Sept-2014	1	\$807,500.00	\$807,500.00	Yes
IBM PureApplication System W2500-64m Appliance Install Annual Appliance Maintenance + Subscription and Support Renewal 12 Months 004 E0JIFLL	1	\$149,710.50	\$149,710.50	No
IBM PureApplication System W2500-64m Appliance Install Annual Appliance Maintenance + Subscription and Support Renewal 12 Months 005 E0JIFLL	1	\$154,201.82	\$154,201.82	No
Subtotal			\$1,114,108.20	
Applicable Sales Tax @ 9%			\$72,675.00	
Total			\$1,186,783.20	
PureStart Services			\$60,000.00	
GRAND TOTAL			\$1,246,783.20	

EXHIBIT C

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease
D	Endorsements and Conditions: 1. ADDITIONAL INSURED: All insurance required above with the exception of Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives. 2. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. 3. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies shall be primary insurance to any insurance available to the Indemnified Parties and Additional Insured(s). Pursuant to the provisions of this Agreement, insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. 4. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. 5. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. 6. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by any one of the following methods: — Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured (covered party), or at minimum named as an "Additional Insured" on the other's policies. — Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured. 7. CANCELLATION OF INSURANCE: All required insurance shall be endorsed to provide thirty (30) days advance written notice to the County of cancellation. 8. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent to: - SSA Contracts Office: 2000 San Pablo Ave. 4th Floor, Oakland, CA 94612 - With a copy to Risk Management Unit (125 – 12th Street, 3rd Floor, Oakland, CA 94607)	



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
7/9/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. New York, NY 199 Water Street New York, NY 10038-3551 USA	CONTACT NAME: PHONE (A/C No. Ext): FAX (A/C No): E-MAIL ADDRESS:												
INSURED International Business Machines Corp. & Any Other Subsidiary Corp. Owned or Controlled by the Insured 1 New Orchard Road Armonk, NY 10504 United States	<table border="1"><thead><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A: ACE American Insurance Company</td><td>22667</td></tr><tr><td>INSURER B: ACE Property & Casualty Insurance Company</td><td>20699</td></tr><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr></tbody></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: ACE American Insurance Company	22667	INSURER B: ACE Property & Casualty Insurance Company	20699						
INSURER(S) AFFORDING COVERAGE	NAIC #												
INSURER A: ACE American Insurance Company	22667												
INSURER B: ACE Property & Casualty Insurance Company	20699												

COVERAGES **CERTIFICATE NUMBER: 210281** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC OTHER:	X		HDO G27334556	5/21/2014	5/21/2015	EACH OCCURRENCE \$ \$10,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ \$10,000,000 MED EXP (Any one person) \$ \$25,000 PERSONAL & ADV INJURY \$ \$10,000,000 GENERAL AGGREGATE \$ \$10,000,000 PRODUCTS - COMP/OP AGG \$ \$10,000,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS	X		ISA H08820491	5/21/2014	5/21/2015	COMBINED SINGLE LIMIT (Ea accident) \$ \$5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$			X00 G2 73 80 03 7	5/21/2014	5/21/2015	EACH OCCURRENCE \$ \$5,000,000 AGGREGATE \$ \$5,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Automobile Liability limits over \$5,000,000 are evidenced by the Excess (Umbrella) Liability Policy.
Please see page 2 for any additional language.

CERTIFICATE HOLDER COUNTY OF ALAMEDA- Social Services Agency 2000 San Pablo Ave. 4th Floor Oakland, CA 94612 United States	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Authorized Representative: Aon Risk Services Northeast, Inc. <i>Aon Risk Services Northeast, Inc.</i>



ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, inc. New York, NY 199 Water Street New York, NY 10038-3551 USA	NAMED INSURED International Business Machines Corp. & Any Other Subsidiary Corp. Owned or Controlled by the Insured 1 New Orchard Road Armonk, NY 10504 United States
EFFECTIVE DATE: 5/21/2014	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

COUNTY OF ALAMEDA- Social Services Agency is hereby named as an additional insured on General Liability policy but only to the extent that their interest may appear.

COUNTY OF ALAMEDA- Social Services Agency is hereby named as an additional insured on Auto Liability policy but only to the extent that their interest may appear.

Project: Pure Services Contract

If there is a question regarding this certificate please contact Monica Davis
(Email: davisma@us.ibm.com Phone: 520-219-3271)

All operations incidental to the conduct of insured's business in the United States of America.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/9/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. 199 Water Street New York, NY 10038 Phone: 866.266.7475 Fax: 866.467.7847	CONTACT NAME: _____ PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____ PRODUCER CUSTOMER ID #: _____
INSURED International Business Machines Corp. 1 New Orchard Road Armonk, NY 10504 United States	INSURER(S) AFFORDING COVERAGE INSURER A: Liberty Mutual Fire Insurance Company INSURER B: LM Insurance Corp. INSURER C: National Union Fire Insurance Company of Pittsburgh, PA NAIC #

COVERAGES

CERTIFICATE NUMBER: 210280

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY						EACH OCCURRENCE
	☐ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)
	☐ CLAIMS-MADE ☐ OCCUR						MED EXP (Any one person)
							PERSONAL & ADV INJURY
							GENERAL AGGREGATE
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG
	☐ POLICY ☐ PROJECT ☐ LOC						
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)
	☐ ANY AUTO						BODILY INJURY (Per person)
	☐ ALL OWNED AUTOS						BODILY INJURY (Per accident)
	☐ SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident)
	☐ HIRED AUTOS						
	☐ NON-OWNED AUTOS						
	UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE
	EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE
	DEDUCTIBLE						
	RETENTION \$						
A B B B C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N		ELA-621-004158-844 (VI) WAS-62D-004158-444 (AOS) ** WAS-62D-004158-874 (MN) WCS-621-004158-154 (WI) EWS-62N-004158-694 (Excess OH) 83-139820 (Guam)	1/1/2014 1/1/2014 1/1/2014 1/1/2014 1/1/2014	1/1/2015 1/1/2015 1/1/2015 1/1/2015 1/1/2015	☒ WC STATU-TORY LIMITS ☐ OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	☐ No	N/A				E.L. EACH ACCIDENT \$5,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$5,000,000
							E.L. DISEASE - POLICY LIMIT \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

** Includes EL coverage for monopolistic states ND, PR, WA, WY

** (AOS) = All Other States

Please see page 2 for any additional language.

CERTIFICATE HOLDER**CANCELLATION**

COUNTY OF ALAMEDA- Social Services Agency
2000 San Pablo Ave.
4th Floor
Oakland, CA 94612
United States

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Authorized Representative:
Aon Risk Services Northeast, Inc.

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ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, Inc. 199 Water Street New York, NY 10038 Phone: 866.266.7475 Fax: 866.467.7847	NAMED INSURED International Business Machines Corp. 1 New Orchard Road Armonk, NY 10504 United States
EFFECTIVE DATE: 01/01/2014	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Project: Pure Services Contract

If there is a question regarding this certificate please contact Monica Davis
(Email: davisma@us.ibm.com Phone: 520-219-3271)

All operations incidental to the conduct of insured's business in the United States of America.

EXHIBIT D

**COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION**

(Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:

- **Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;**
- **Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;**
- **Does not have a proposed debarment pending; and**
- **Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.**

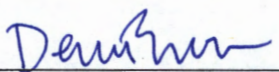
If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR NAME: International Business Machines (IBM) Corporation

PRINCIPAL: Devin F. Brown **TITLE:** Client Executive, CA Public Sector

SIGNATURE:  **DATE:** 9/5/14

SAM Search Results
List of records matching your search for :

Search Term : international* business* machines*
Record Status: Active

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 835130485	+4:	CAGE Code: 3BXY7 DoDAAC:
Expiration Date: Jul 29, 2015	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 6710 ROCKLEDGE DRIVE		
City: BETHESDA	State/Province: MARYLAND	
ZIP Code: 20817-1834	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 119714236	+4:	CAGE Code: 15898 DoDAAC:
Expiration Date: Jul 11, 2015	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 1000 River St		
City: Essex Junction	State/Province: VERMONT	
ZIP Code: 05452-4201	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 084006741	+4:	CAGE Code: 2G381 DoDAAC:
Expiration Date: Apr 15, 2015	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 1101 Kitchawan Rd		
City: Yorktown Heights	State/Province: NEW YORK	
ZIP Code: 10598	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 183717651	+4:	CAGE Code: 15900 DoDAAC:
Expiration Date: Apr 15, 2015	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 650 HARRY RD		
City: SAN JOSE	State/Province: CALIFORNIA	
ZIP Code: 95120-6001	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 111410184	+4:	CAGE Code: 49EQ3 DoDAAC:
Expiration Date: Apr 15, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 800 N FREDERICK AVE City: GAITHERSBURG State/Province: MARYLAND ZIP Code: 20879-3326 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 790384072	+4:	CAGE Code: 1D185 DoDAAC:
Expiration Date: Apr 2, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 2070 Rte 52 City: HOPEWELL JUNCTION State/Province: NEW YORK ZIP Code: 12533-3507 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 933093676	+4:	CAGE Code: 526U1 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 6710 ROCKLEDGE DR City: BETHESDA State/Province: MARYLAND ZIP Code: 20817-1834 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 833239556	+4:	CAGE Code: 5VKA3 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 2300 DULLES STATION BLVD STE 200 City: HERNDON State/Province: VIRGINIA ZIP Code: 20171-6349 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 808190412	+4:	CAGE Code: 579A9 DoDAAC:
Expiration Date: Mar 20, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 11300 DR MARTIN LUTHER KING JR ST N STE 315 City: SAINT PETERSBURG State/Province: FLORIDA ZIP Code: 33716-2325 Country: UNITED STATES		

ENTITY:	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 965588424	+4:	CAGE Code: 67FJ6 DoDAAC:
Expiration Date: Mar 20, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 310 STATE RTE 956		
City: KEYSER	State/Province: WEST VIRGINIA	
ZIP Code: 26726-0000	Country: UNITED STATES	

ENTITY:	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 038253597	+4:	CAGE Code: 6E2D2 DoDAAC:
Expiration Date: Mar 20, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 299-300 LONG MEADOW RD		
City: STERLING FOREST	State/Province: NEW YORK	
ZIP Code: 10979-0000	Country: UNITED STATES	

ENTITY:	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 825382281	+4:	CAGE Code: 8W884 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 11107 Sunset Hills Rd Ste 500		
City: Reston	State/Province: VIRGINIA	
ZIP Code: 20190-5375	Country: UNITED STATES	

ENTITY:	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 827671913	+4:	CAGE Code: 55E89 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 7095 SAMUEL MORSE DR STE 200		
City: COLUMBIA	State/Province: MARYLAND	
ZIP Code: 21046-3417	Country: UNITED STATES	

ENTITY:	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 156472011	+4:	CAGE Code: 0K670 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 12902 FEDERAL SYSTEMS PARK DR		
City: FAIRFAX	State/Province: VIRGINIA	
ZIP Code: 22033-4421	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 827822300	+4:	CAGE Code: 55P83 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 6303 BARFIELD RD City: ATLANTA State/Province: GEORGIA ZIP Code: 30328-4233 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 060790131	+4:	CAGE Code: 1VZC6 DoDAAC:
Expiration Date: Mar 18, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 8123 S HARDY DR City: TEMPE State/Province: ARIZONA ZIP Code: 85284-1106 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 078392668	+4:	CAGE Code: 3U1B1 DoDAAC:
Expiration Date: Mar 18, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 15036 CONFERENCE CENTER DR City: CHANTILLY State/Province: VIRGINIA ZIP Code: 20151-3848 Country: UNITED STATES		

SAM Search Results
List of records matching your search for :

Search Term : devin* brown*
Record Status: Active

No Search Results

EXHIBIT E

**COUNTY OF ALAMEDA
CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within 5 business days in the System, immediately enter payments made to subcontractors and ensure that subcontractors confirm they received payments within 5 business days in the System. Subcontractors shall confirm their payments received from the prime contractor within 5 business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County should schedule a representative from their office/company, along with each of their subcontractors, to attend training. The training schedule may be viewed online at http://www.elationsys.com/elationsys/support_1.htm or call Elation Systems at (925) 924-0340. A special access code will be provided to contractors and subcontractors participating in this contract awarded to allow use of the System free of charge.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.

IBM Customer Agreement

This IBM Customer Agreement (called the "Agreement") governs transactions by which Customer purchases Machines, licenses ICA Programs, obtains Program licenses, and acquires Services (including, without limitation, customized development and support, business consulting, and maintenance Services) from International Business Machines Corporation ("IBM").

1 General Terms

11 Agreement Structure

This Agreement is organized in six Parts:

Part 1 – General Terms includes terms regarding Agreement Structure, Definitions, Acceptance of Terms, Delivery, Charges and Payment, Changes to Agreement Terms, IBM Business Partners, Intellectual Property Protection, Limitation of Liability, Compliance Verification, General Principles of Our Relationship, Agreement Termination, and Geographic Scope and Governing Law.

Part 2 – Warranties defines applicable Warranties for IBM Machines, ICA Programs, IBM Services, and Systems, and terms regarding Extent of Warranty.

Part 3 – Machines Terms includes Machine terms regarding Production Status, Title and Risk of Loss, and Installation.

Part 4 – Licenses for Machine Code and Other Internal Licensed Code includes the License for Machine Code and the License for Other Internal Licensed Code.

Part 5 – License for ICA Programs includes ICA Program terms regarding License, Distributed System License Option, Program Services, Compliance Verification, and License Termination.

Part 6 – Services Terms includes terms regarding Personnel, Materials Ownership and License, Customer Resources, Service for Machines (during and after warranty), Maintenance Coverage, Automatic Service Renewal, and Termination and Withdrawal of a Service.

12 Attachments and Transaction Documents

Additional terms for Products and Services are in documents called "Attachments" and "Transaction Documents" provided by IBM. In general, Attachments contain terms that may apply to more than one Product or Services transaction, while Transaction Documents (such as a statement of work, supplement, schedule, invoice, exhibit, change authorization, or addendum) contain specific details and terms related to each individual transaction. Customer may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

If there is a conflict among the terms of this Agreement, Attachments, and Transaction Documents, those of an Attachment prevail over those of this Agreement, and the terms of a Transaction Document prevail over those of both this Agreement and an Attachment.

13 Definitions

Authorized Built-in Capacity -- the Built-in Capacity for a Covered Machine that was Properly Acquired and Activated and is used in accordance with the AUT. For purposes of this definition, "Activated" means when IBM causes, directly or indirectly, the Authorized Built-in Capacity to be made available for Customer's use on a Covered Machine.

Authorized Use Table (AUT) -- the "IBM Authorized Use Table for Machines" that is provided at the following address: www.ibm.com/systems/support/machinewarranties/machinecode/aut.html and is in effect for a Covered Machine as of the acquisition date of the Covered Machine or, if there are one or more Machine Upgrades on the Covered Machine, then as of the acquisition date of the most recently acquired Machine Upgrade. The AUT is incorporated by reference into this Agreement.

Built-in Capacity -- the type and quantity of all resources and capabilities that IBM provides for a Machine, the access or use of which IBM has the ability to restrict by contract or Technological Measures. Built-In Capacity includes, without limitation, the type and quantity of the following: 1) processors, cores, processing capacity, processor performance setting and interactive processing capacity and capabilities; 2) memory; 3) storage; 4) cryptographic capability; 5) input/output ports, and 6) workload-specific resources and capabilities (including, for example, System z mainframe specialty processors such as

zIIPs, zAAPs and IFLs, and other limited purpose products (including "appliances"). Built-in Capacity is either Authorized Built-in Capacity or Unauthorized Built-in Capacity.

Circumvent -- to, directly or indirectly, by or through any means, alter, avoid, disrupt, subvert, go around, or otherwise interfere with.

Covered Machine -- the specific Machine (as identified by serial number or order number on a Transaction Document or other similar contract document issued by IBM) for which use of Machine Code is licensed. A Covered Machine that receives a Machine Upgrade remains a Covered Machine and a Machine that receives a Machine Upgrade becomes a Covered Machine.

Customer-set-up Machine -- an IBM Machine that Customer is responsible for installing according to instructions provided with it.

Date of Installation --

- a. for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;
- b. for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and
- c. for a Program --
 - (1) basic license, the second business day after the Program's standard transit allowance period,
 - (2) copy, the date (specified in a Transaction Document) on which IBM authorizes Customer to make a copy of the Program, and
 - (3) chargeable component (also called a feature), the date Customer uses the chargeable component or a copy. Customer agrees to notify IBM of the chargeable component's Date of Installation.

Designated Machine -- a Machine of a type specified in the Mainframe Exhibits provided at the following address: <http://www.ibm.com/systems/z/resources/swprice/reference/exhibits/hardware.html>.

Engineering Change -- an update to modify certain aspects of the design of an installed Machine, including without limitation the design of a certain Machine part or Machine Code.

Enterprise -- any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the Enterprise located in the United States.

IBM Machine -- a Machine bearing an IBM logo.

IBM Product -- an IBM Machine, ICA Program, or Other IBM Program.

ICA Program -- an IBM Program licensed under Part 5 of this Agreement.

Licensed Internal Code (called "LIC") -- another term for Machine Code commonly used for certain IBM product lines, such as for IBM System z Machines. LIC and Machine Code are interchangeable terms that have the same meaning.

Machine -- a hardware device, including its resources, capabilities, features, conversions, Machine Upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment).

Machine Code -- all of the following: (i) all code provided for an IBM Machine (including, without limitation, a Machine's firmware and microcode), excluding code that is licensed under a license agreement other than the license agreement governing use of Machine Code (for example, IBM operating system and middleware products); and (ii) records, data, and structures created, used or relied on by the code in item (i) (for example, IBM System z Machine LIC configuration control records and passwords that help restrict access or use of the code in item (i)). The term Machine Code specifically includes any whole or partial copy of Machine Code, and any fix, patch, or replacement provided for Machine Code.

Machine Upgrade -- the following changes that IBM sells for installation on a Machine: a hardware or Machine Code change to modify, add, remove, enable or disable certain Built-in Capacity or other resources and capabilities. Each such change can be accomplished through a Machine conversion, or through the conversion, addition, removal, or exchange of a Machine's feature(s).

Materials -- literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that IBM may deliver to Customer as part of a Service. The

term "Materials" does not include Programs, Machine Code, or other items available under their own license terms or agreements.

Non-IBM Program – a Program licensed under a separate third party license agreement.

Other IBM Program – an IBM Program licensed under a separate IBM license agreement (e.g., IBM International Program License Agreement).

Other Internal Licensed Code – code for a Covered Machine that is separately provided by IBM and licensed by a third party.

Product – a Machine or a Program.

Program – the following, including the original, any portion thereof, and all whole or partial copies:

- a. one or more sequences of instructions suitable for processing by a computer;
- b. control data (such as control blocks, event logs, configuration files) defined within or generated by the execution of such sequence(s) of instructions. Control data includes without limitation data that is designed to (i) manage or limit the operation of programs, or (ii) help monitor, record, manage, or limit the consumption of software or hardware resources, including, without limitation, data used in IBM's implementation of Technological Measures;
- c. components;
- d. audio-visual content (such as images, text, recordings, or pictures) defined within or generated by the execution of, such sequence(s) of instructions; and
- e. related licensed materials such as publications and other documentation.

The term "Program" includes any ICA Program, Other IBM Program, or Non-IBM Program, and any fix, patch or replacement that IBM may provide for a Program. The term does not include Machine Code or Materials.

Service – performance of a task, assistance, support, or access to resources (such as an information database) that IBM makes available to Customer.

Specifications – information specific to a Product. IBM Machine Specifications are in a document entitled "Official Published Specifications." ICA Program Specifications are in a document entitled "Licensed Program Specifications."

Specified Operating Environment – the Machines and Programs with which an ICA Program is designed to operate, as described in its Licensed Program Specifications.

Technological Measures – all means, methods, systems, processes, checks, tests, monitoring, validations, instruments, and other measures that IBM implements for the purpose of: (i) protecting, controlling, limiting, and restricting the use of Machine Code; (ii) protecting, controlling, limiting, and restricting the access to or use of Built-in Capacity (including, for clarity, both Unauthorized Built-in Capacity and Authorized Built-in Capacity); and (iii) monitoring and reporting use of the Machine Code, Authorized Built-in Capacity, and Unauthorized Built-In Capacity, including for the purpose of calculating usage-based charges for IBM Products. Without limiting the generality of the preceding sentence, Technological Measures may be implemented, in whole or in part, in Machine Code, IBM Programs, other code, other IBM technology, and in the data created, used or relied upon by such Machine Code, IBM Programs, other code, and IBM technology.

Unauthorized Built-in Capacity -- all Built-in Capacity for a Covered Machine other than Authorized Built-in Capacity. For example and for the avoidance of any doubt, each of the following is Unauthorized Built-In Capacity: (i) in the case of a processor authorized to operate at less than its full processor performance setting, the capability to operate the processor at a greater processor performance setting, and (ii) in the case of a System z Machine specialty processor, the capability to use the specialty processor for anything other than the "Authorized Uses" as such term is defined in the AUT.

1.4 Acceptance of Terms

Customer accepts the terms in Attachments and Transaction Documents by i) signing them (by hand or electronically), ii) using the Product or Service, or allowing others to do so, or iii) making any payment for the Product or Service.

A Product or Service becomes subject to this Agreement when IBM accepts Customer's order by i) sending Customer a Transaction Document, ii) shipping the Machine or making the Program available to Customer, or iii) providing the Service.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

15 Delivery

Delivery dates and ship dates are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document. For Programs IBM provides to Customer in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Customer and IBM.

16 Charges and Payment

1.6.1 Charges

A Transaction Document specifies the amount payable for Products or Services, based on one or more of the following types of charges: one-time, recurring, time and materials, or fixed price. Additional charges may apply (such as special handling or travel related expenses). IBM will inform Customer in advance whenever additional charges apply.

Recurring charges for a Product begin on its Date of Installation. Charges for Services are billed as specified in a Transaction Document, which may be in advance, periodically during the performance of the Service, or after the Service is completed. Unless otherwise provided in this Agreement (including any applicable Attachment or Transaction Document): i) Services for which Customer prepays must be used within the applicable contract period; and ii) IBM does not give credits or refunds for any prepaid or other charges already due or paid.

If a Transaction Document provides an estimated total charge for time and materials or for usage charges, the estimate is for planning purposes only. IBM invoices charges based on actual time and materials expended or Customer's actual or authorized use, subject to any specified minimum commitment.

1.6.2 Usage Charges

One-time and recurring charges may be based on measurements of actual or authorized use (for example, authorized capacity for Machines, number of users or processor size for Programs, or meter readings for maintenance Services). Customer agrees to provide actual usage data as described in an Attachment or Transaction Document.

If Customer makes changes to its environment that impact usage charges, Customer agrees to promptly notify IBM and pay any applicable charges. Recurring charges will be adjusted accordingly. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.

1.6.3 Changes to Charges

From time to time, IBM may change its charges. Customer receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.

Unless provided otherwise in an Attachment or Transaction Document, IBM may increase recurring charges for Products and Services, as well as labor rates and minimums for Services provided under this Agreement, by giving Customer three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date IBM specifies in the notice.

IBM may increase one-time charges without notice. However, an increase to one-time charges does not apply to Customer if i) IBM receives the order before the announcement date of the increase and ii) one of the following occurs within three months after IBM's receipt of the order:

- a. IBM ships Customer the Machine or makes the Program available to Customer;
- b. Customer makes an authorized copy of a Program or distributes a chargeable component of a Program to another Machine; or
- c. a Program's increased use charge becomes due.

1.6.4 Payment

Amounts are due upon receipt of invoice and payable within 30 days or as specified in a Transaction Document. Customer agrees to pay accordingly, including any late payment fee. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties.

1.6.5 Taxes

If any authority imposes upon any transaction under this Agreement a duty, tax, levy, or fee, excluding those based on IBM's net income, then Customer agrees to pay that amount as specified in an invoice, unless Customer supplies exemption documentation. Customer is responsible for any personal property

taxes for each Product from the date IBM ships it to Customer. For Programs that IBM delivers electronically to Customer and for which Customer claims a state sales and use tax exemption, Customer and IBM agree that no tangible personal property (e.g., media and publications) is transferred to Customer.

Additional taxes and tax related charges may apply if IBM personnel are required to perform Services outside their normal tax jurisdiction. As practical, IBM will work to mitigate such additional tax and tax-related charges and will inform Customer in advance if these additional charges apply and are payable by Customer.

1.7 Changes to the Agreement Terms

In order to maintain flexibility in our business relationship, IBM may change the terms of this Agreement by providing Customer at least three months' written notice. However, these changes are not retroactive. They apply, as of the effective date IBM specifies in the notice, only to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, Customer may request that IBM defer the change effective date until the end of the current contract period.

Customer acknowledges its agreement to have these changes apply for such transactions by i) placing new orders for Products or Services after the change effective date, ii) failing to request that the change effective date be deferred until the start of the next renewal period, iii) allowing transactions to renew after receipt of the change notice, or iv) failing to terminate non-expiring transactions prior to the change effective date. Changes to charges are implemented as described in the Charges and Payment section above.

Otherwise, for a change to be valid, both parties must sign it.

1.8 IBM Business Partners

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Products and Services. Customer may order Products or Services that are promoted or marketed to Customer by IBM Business Partners or other suppliers, however, i) this Agreement applies only if a Transaction Document subject to this Agreement is provided for the specific transaction, and ii) such Business Partners and suppliers remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or other suppliers, any obligations either has to Customer, or any products or services that they supply to Customer under their agreements.

1.9 Intellectual Property Protection

For purposes of this Intellectual Property Protection section, the term "Product" also includes Materials and Machine Code.

1.9.1 Third-Party Claims

If a third party asserts a claim against Customer that an IBM Product that IBM provides to Customer under this Agreement infringes that party's patent or copyright, IBM will defend Customer against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved in advance by IBM, provided that Customer:

- a. promptly notifies IBM in writing of the claim;
- b. allows IBM to control, and cooperates with IBM in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with the Product's applicable license terms and Customer's obligations under section 1.9.2 (Remedies) below.

1.9.2 Remedies

If such a claim is made or appears likely to be made, Customer agrees to permit IBM, in IBM's discretion, either to i) enable Customer to continue to use the Product, ii) modify it, or iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, then on IBM's written request, Customer agrees to promptly return the Product to IBM and discontinue its use. IBM will then give Customer a credit equal to:

- a. for a Machine, Customer's net book value calculated according to generally-accepted accounting principles;

- b. for an ICA Program, the amount Customer paid IBM for the Program's license or 12 months' charges (whichever is less); and
- c. for Materials, the amount Customer paid IBM for the creation of the Materials.

1.9.3 Claims for Which IBM is Not Responsible

IBM has no obligation regarding any claim based on any of the following:

- a. anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. a Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, to the extent a claim could have been avoided by using the current release or version;
- c. any modification of a Product made by Customer or by a third party on Customer's behalf or the combination, operation, or use of a Product with any other Product, hardware device, program, data, apparatus, method, or process;
- d. the distribution, operation or use of a Product outside Customer's Enterprise;
- e. running or executing an ICA Program on other than a Designated Machine; or
- f. a non-IBM Product or an Other IBM Program.

This Intellectual Property Protection section states IBM's entire obligation and Customer's exclusive remedy regarding any third party intellectual property claims.

1.10 Limitation of Liability

1.10.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Product or Service or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of \$100,000 or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this Limitation of Liability section, the term "Product" also includes Materials and Machine Code.

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible. The following amounts are not subject to a cap on the amount of damages:

- a. payments referred to in the Intellectual Property Protection section above; and
- b. damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable.

1.10.2 Items for Which IBM Is Not Liable

Except as expressly required by law without the possibility of contractual waiver, under no circumstances is IBM, its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

- a. loss of, or damage to, data;
- b. special, incidental, exemplary, or indirect damages or for any economic consequential damages; or
- c. lost profits, business, revenue, goodwill, or anticipated savings.

1.11 Compliance Verification

Upon reasonable notice, IBM may verify the usage data and other information affecting the calculation of charges under this Agreement. Such verification will be conducted in a manner that minimizes disruption to Customer's business and may be conducted on Customer's premises, during Customer's normal business hours. Customer agrees to i) provide records, system tools outputs, and other electronic or hard copy system information reasonably necessary for such verification, and ii) promptly pay any additional, valid charges and other liabilities determined as a result of such verification.

IBM's right to verify Customer's usage data and other information affecting the calculation of charges also includes the right to verify Customer's compliance with all other terms of this Agreement (including

applicable Attachments and Transaction Documents). IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

Customer agrees to create, retain, and provide to IBM and its auditors written records, system tools outputs, and other system information sufficient to provide auditable verification that Customer's installation and running or executing ICA Programs complies with the Agreement terms, including IBM's applicable licensing and pricing terms. IBM will notify Customer in writing if any such verification indicates that Customer is not in compliance with Agreement terms. The rights and obligations in this section remain in effect during the period any ICA Programs are licensed to Customer and for two years thereafter.

1.11.1 Circumvention of Technological Measures

Customer will not (i) Circumvent or attempt to Circumvent any Technological Measures in an IBM Product or use a third party or third party product to do so, or (ii) in any way access, use, or attempt to access or use, Unauthorized Built-in Capacity.

1.12 General Principles of Our Relationship

1.12.1 Notices and Communications

Written communications, including notices to the receiving party's designated representative, are to be sent to the address (physical, e-mail or facsimile) specified in an applicable Attachment or Transaction Document. The parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

1.12.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments without obtaining Customer's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

Customer agrees not to resell any Service without IBM's prior written consent. Any attempt to do so is void.

Customer agrees to acquire each Machine with the intent to use it as designed and in the form it was sold within Customer's Enterprise and not for reselling, leasing, or transferring it, in whole or in part, to a third party, unless either of the following applies:

- a. Customer is arranging lease-back financing for the Machine; or
- b. Customer has paid IBM's list price or reference price, as applicable for the Machine, and does not remarket it in competition with IBM or IBM's authorized remarketers.

1.12.3 Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology Products and Services. IBM is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Products and Services that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular Products or Services under this Agreement meets the requirements of such laws. Neither party is obligated to take any action that would violate applicable law.

Each party will comply with all applicable export and import laws, regulations, and associated embargo and sanction regulations, including prohibitions on export for certain end uses or to certain end users.

1.12.4 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

1.12.5 Other Principles of Our Relationship

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Product or Service under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Each party grants only the licenses and rights specified in this Agreement. No other licenses or rights (including licenses or rights under patents) are granted either directly, by implication, or otherwise. The rights and licenses granted to Customer under this Agreement may be terminated if Customer fails to fulfill its applicable payment obligations.
- e. Customer agrees that IBM may process the business contact information of Customer's employees and contractors and information about Customer as a legal entity (contact information) in connection with IBM Products and Services or in furtherance of IBM's business relationship with Customer. This contact information can be stored, disclosed internally and processed by International Business Machines Corporation and its subsidiaries, Business Partners and subcontractors wherever they do business, solely for the purpose described above provided that these companies comply with applicable data privacy laws related to this processing. Where required by applicable law, Customer has notified and obtained the consent of the individuals whose contact information may be stored, disclosed internally and processed and will forward their requests to access, update, correct or delete their contact information to IBM who will then comply with those requests.
- f. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except as described in the Intellectual Property Protection section above or as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- g. Customer is responsible for selecting the Products and Services that meet its needs and for the results obtained from the use of the Products and Services, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- h. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.

1.13 Agreement Termination

Either party may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations under this Agreement, including any applicable Attachment or Transaction Document.

Either party may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply. License termination and termination of a Services transaction are described in Parts 5 and 6, respectively.

Any terms of this Agreement that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

1.14 Geographic Scope and Governing Law

The rights, duties, and obligations of each party are valid only in the United States except that all licenses are valid as specifically granted.

Both parties agree to the application of the laws of the State of New York to govern, interpret, and enforce all of Customer's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

2 Warranties

21 The IBM Warranties

2.1.1 Warranty for IBM Machines

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine is a fixed period, specified in a Transaction Document. For Machines, unless otherwise specified, the Date of Installation is the Warranty Start Date.

During the warranty period, IBM provides repair and exchange Service for the IBM Machine, without charge, under the type of Service IBM designates for the IBM Machine. If an IBM Machine does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to IBM for a refund.

Additional terms regarding Service for Machines during and after the warranty period are in Part 6.

2.1.2 Warranty for ICA Programs

IBM warrants that each warranted ICA Program, when used in the Specified Operating Environment, will conform to its Specifications.

During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted ICA Program for at least one year following its general availability. The warranty period for an ICA Program expires when its Program Services are no longer available.

If an ICA Program does not function as warranted during the first year after Customer obtains its license and IBM is unable to make it do so, Customer may return the ICA Program and the charges Customer paid for the license will be refunded. To be eligible, Customer must have obtained its license while Program Services (regardless of the remaining duration) were available for the ICA Program. Additional terms regarding Program Services are contained in Part 5.

2.1.3 Warranty for IBM Services

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

2.1.4 Warranty for Systems

When IBM specifies in an Attachment or Transaction Document that it is providing Products to Customer that are intended to operate together as a system, IBM warrants that those Products are compatible and, when installed in accordance with their Specifications, will operate with one another. This warranty is in addition to IBM's other applicable warranties.

2.2 Extent of Warranty

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies in place of these Machine warranties.

The warranties stated above will not apply to the extent that there has been misuse (including, but not limited to, use of any Unauthorized Built-in Capacity or Circumvention of Technological Measures), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machines is voided by removal or alteration of Machine or parts identification labels.

For a Machine that IBM is responsible to install, if Customer elects to install the Machine itself or have a third party install the Machine, IBM may inspect the Machine at Customer's expense before providing warranty Service on the Machine. If the Machine is not in an acceptable condition for warranty Service, as

solely determined by IBM, Customer may request that IBM restore it to an acceptable condition for Service or Customer may withdraw its request for warranty Service. IBM, at its sole discretion, will determine if restoration is possible. Restoration is provided as a billable Service.

THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

2.2.1 Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects.

IBM will identify IBM Machines and ICA Programs that it does not warrant.

IBM's Warranty for ICA Programs does not extend to an ICA Program that is run or executed on other than a Designated Machine.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides Materials, non-IBM Products (including those provided with, or installed on, an IBM Machine at Customer's request), and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements.

3 Machines Terms

3.1 Production Status

Each IBM Machine is manufactured from parts that may or may not be new. In some cases, a Machine may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms described in Part 2 apply.

3.2 Title and Risk of Loss

When IBM accepts Customer's order, IBM agrees to sell Customer the Machine described in a Transaction Document. IBM transfers title to Customer or, if applicable, Customer's lessor when the Machine is shipped to Customer or its designated location. However, IBM reserves a purchase money security interest in the Machine until IBM receives the amounts due. For a feature, conversion, or Machine Upgrade involving the removal of parts that become IBM's property, IBM reserves a security interest until IBM receives payment of all the amounts due and the removed parts. Customer authorizes IBM to file appropriate documents to permit IBM to perfect its security interest.

For each Machine, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, Customer must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

3.3 Installation

3.3.1 Machine Installation

Customer agrees to provide an environment meeting the requirements for the Machine as specified in its published documentation.

Within 30 calendar days of the shipment of a Machine, Customer agrees to install the Machine or, if IBM is responsible for the installation, to allow IBM to install the Machine. IBM has standard installation procedures. IBM will successfully complete these procedures before it considers an IBM Machine (other than a Machine for which Customer defers installation or a Customer-set-up Machine) installed. For a Machine that IBM is responsible to install, if the Machine is not made available for IBM to install within six months from shipment, installation will be subject to an installation charge.

Customer is responsible for installing a Customer-set-up Machine and a non-IBM Machine according to instructions provided by IBM or the Machine's manufacturer.

3.3.2 Machine Upgrades and Engineering Changes

IBM sells Machine Upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Within 30 calendar days of the shipment of a Machine Upgrade, Customer agrees to install the Machine Upgrade or, if IBM is responsible for the installation, to allow IBM

to install the Machine Upgrade. Certain Machine Upgrade orders may be terminated at IBM's discretion if not made available for IBM to install within 30 calendar days of shipment, in which case Customer must return the Machine Upgrade to IBM at Customer's expense. In all cases, if the Machine Upgrade is not made available for IBM to install within six months from the date IBM ships the Machine Upgrade, installation will be subject to an installation charge.

Customer agrees to allow IBM to install mandatory Engineering Changes (such as those required for safety) on a Machine within 30 calendar days of IBM's notice to Customer unless otherwise agreed to by the parties.

Many Machine Upgrades and Engineering Changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the Machine Upgrade or Engineering Change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install Machine Upgrades and Engineering Changes and ii) transfer ownership and possession of removed parts to IBM. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance Service status of the replaced part.

4. Licenses for Machine Code and Other Internal Licensed Code

Customer acknowledges that each Covered Machine contains Machine Code and may also contain Other Internal Licensed Code. Regardless of the source from which Customer acquires an IBM Machine, IBM's license terms regarding Machine Code and Other Internal Licensed Code included with the Machine apply.

4.1 License for Machine Code

Customer's use of Machine Code on a Covered Machine is governed by the terms of the applicable IBM License Agreement for Machine Code provided at <http://www.ibm.com/systems/support/machinewarranties/machinecode.html>

4.2 License for Other Internal Licensed Code (OILC)

OILC is licensed under, and Customer's use is governed by, the terms of the applicable license agreement(s) for such OILC provided at: <http://www.ibm.com/servers/support/machinewarranties/supportbyproduct.html>

5. License for ICA Programs

5.1 License

When IBM accepts Customer's order, IBM grants Customer a nonexclusive license to use the ICA Program only within Customer's Enterprise in the United States. ICA Programs are owned by International Business Machines Corporation, one of its subsidiaries, or a third party and are copyrighted and licensed (not sold).

5.1.1 Authorized Use

Under each license, IBM authorizes Customer to:

- a. run or execute the ICA Program only on the Designated Machine specified by the Customer to IBM under the terms of Section 5.1.2 below;
- b. use the ICA Program to the extent of authorizations Customer has obtained;
- c. solely in support of the level of use authorized by IBM, make and install copies of the ICA Program on the following: (i) the Designated Machine, and (ii) on an additional Designated Machine, for backup purposes, if the ICA Program is not performing productive work (including, without limitation, production, development, test, program maintenance, mirroring, etc.) on such additional Designated Machine; provided that Customer reproduces the copyright notices and any other legends of ownership on each copy or partial copy; and
- d. use any portion of the ICA Program IBM i) provides in source form, or ii) marks restricted (for example, marked "Restricted Materials of IBM") only to:
 - (1) resolve problems related to the use of the ICA Program, and
 - (2) modify the ICA Program so that, while not otherwise violating the terms of this Agreement, it will work together with other products.

5.1.2 Customer's Additional Obligations

For each ICA Program, Customer agrees to:

- a. provide its IBM representative with the type/model and serial number of the Designated Machine, and provide advance written notice and the effective date of any change from one Designated Machine to another Designated Machine;
- b. comply with any additional or different terms in its Licensed Program Specifications or another Attachment or Transaction Document;
- c. ensure that anyone who uses it (accessed either locally or remotely) does so only for Customer's authorized use and complies with IBM's terms regarding ICA Programs; and
- d. maintain a record of all copies and provide it to IBM at its request.

5.1.3 Actions Customer May Not Take

For each ICA Program, Customer agrees not to:

- a. modify the ICA Program except as IBM expressly allows in this Agreement;
- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the ICA Program unless expressly permitted by applicable law without the possibility of contractual waiver; or
- c. sublicense, assign, rent, or lease the ICA Program or transfer it outside Customer's Enterprise.

52 Distributed System License Option

For some ICA Programs, Customer may make a copy under a Distributed System License Option (called a "DSLO" copy). IBM charges less for a DSLO copy than for the original license (called the "Basic" license). In return for the lesser charge, Customer agrees to do the following while licensed under a DSLO:

- a. have a Basic license for the ICA Program;
- b. provide problem documentation and receive Program Services (if any) only through the location of the Basic license; and
- c. distribute to, and install on, the DSLO's Designated Machine, any release, correction, or bypass that IBM provides for the Basic license.

53 Program Services

IBM provides Program Services for warranted ICA Programs. If IBM can reproduce Customer's reported problem in the Specified Operating Environment, IBM will issue defect correction information, a restriction, or a bypass. IBM provides Program Services for only the unmodified portion of a current release of an ICA Program.

IBM provides Program Services i) on an on-going basis (with at least six months' written notice before IBM terminates Program Services), ii) until the date IBM specifies, or iii) for a period IBM specifies.

5.4 License Termination

Customer may terminate the license for an ICA Program at any time on 30 calendar days' written notice to IBM.

IBM may terminate Customer's license for an ICA Program if Customer fails to comply with:

- a. the terms of this Section 5,
- b. the license terms for Machine Code applicable to the Designated Machine to which the ICA Program is licensed, or
- c. Section 1.11 of this Agreement as such Section pertains to the ICA Program or the Designated Machine to which the ICA Program is licensed.

For each ICA Program license that Customer acquired for a one-time charge, a replacement license may be acquired for an upgrade charge, if available. When Customer obtains a license for such replacement ICA Program, the license of the replaced ICA Program is terminated when charges become due, unless IBM specifies otherwise.

If an ICA Program's license is terminated, Customer's authorization to use the ICA Program is also terminated.

Customer agrees to promptly destroy all copies of the Program after either party has terminated the license.

6 Services

61 Personnel

Each party will assign personnel that are qualified to perform the tasks required of such party under this Agreement and is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.

IBM may engage subcontractors to provide or assist in providing Services, in which case IBM remains responsible for the fulfillment of its obligations under this Agreement and for the performance of the Services.

62 Materials Ownership and License

An Attachment or Transaction Document will specify Materials to be delivered to Customer and identify them as "Type I Materials," "Type II Materials," or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

Customer will own the copyright in Materials created as part of a Service that are identified as "Type I Materials" and each such Material will constitute a "work made for hire" to the extent permissible under U.S. copyright law. If any such Materials are not works made for hire under applicable law, IBM assigns the ownership of copyrights in such Materials to Customer. Customer grants IBM an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.

IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within Customer's Enterprise only) copies of Type II Materials.

IBM or its suppliers retains ownership of the copyright in any of IBM's or its suppliers' works that pre-exist or were developed outside of this Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to Customer, if any, or otherwise as Type II Materials.

Each party agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this section.

63 Customer Resources

If Customer is making available to IBM any facilities, software, hardware or other resources in connection with IBM's performance of Services, Customer agrees to obtain any licenses or approvals related to these resources that may be necessary for IBM to perform the Services and develop Materials. IBM will be relieved of its obligations that are adversely affected by Customer's failure to promptly obtain such licenses or approvals. Customer agrees to reimburse IBM for any reasonable costs and other amounts that IBM may incur from Customer's failure to obtain these licenses or approvals.

Unless otherwise agreed in an Attachment or Transaction Document, Customer is responsible for i) any data and the content of any database Customer makes available to IBM in connection with a Service under this Agreement, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data. IBM's responsibilities regarding such data or database, including any confidentiality and security obligations, are governed by the Attachments and Transaction Documents applicable to the particular Services Transaction (which prevail over the terms of any separate confidentiality agreements) and subject to the Limitation of Liability and other terms in this Agreement.

6.4 Service for Machines (during and after warranty)

6.4.1 Service for Machines

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform Customer of the available types of Service for a Machine. At its discretion, IBM will i) either repair or exchange the failing Machine and ii) provide the Service either at Customer's location or a service center. IBM manages and installs selected Engineering Changes that apply to IBM Machines and may also perform preventive maintenance.

Any feature, conversion, or Machine Upgrade IBM Services must be installed on a Machine which is i) the designated, serial-numbered Machine, if applicable, and ii) at an Engineering-Change level compatible with the feature, conversion, or Machine Upgrade.

When the type of Service requires that Customer deliver the failing Machine to IBM, Customer agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will deliver it to Customer at IBM's expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, Customer's Machine while it is i) in IBM's possession or ii) in transit in those cases where IBM is responsible for the transportation charges. Customer agrees:

- a. to obtain authorization from the owner to have IBM service a Machine that Customer does not own;
- b. where applicable, before IBM provides Service, to --
 - (1) follow the problem determination and service request procedures that IBM provides,
 - (2) secure all programs, data, and funds contained in a Machine, and
 - (3) inform IBM of changes in a Machine's location.
- c. to follow the Service instructions that IBM provides (which may include installing Machine Code and other software updates either downloaded from an IBM Internet Web site or copied from other electronic media); and
- d. when Customer returns a Machine to IBM for any reason --
 - (1) to securely erase from any Machine all programs not provided by IBM with the Machine and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data") and ii) Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
 - (2) to remove all funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that Customer returns to IBM; and
 - (3) IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

6.4.2 Replacements

When Service involves the exchange of a part or Machine, the item IBM replaces becomes IBM's property and the replacement becomes Customer's. Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a part or Machine, Customer agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. Customer also agrees to i) ensure that the part or Machine is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to IBM.

Service for some IBM Machines involves IBM providing Customer with an exchange replacement for installation by Customer. Such exchange replacements may be i) a part of a Machine (called a Customer Replaceable Unit, or "CRU," e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine. Customer may request IBM to install the replacement CRU or Machine, however, Customer may be charged for the installation. IBM provides information and replacement instructions with Customer's Machine and at any time on Customer's request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement, and Customer may be charged for the replacement if IBM does not receive the failing CRU or Machine within 15 calendar days of Customer's receipt of the replacement.

6.4.3 Items Not Covered

Repair and exchange Services do not cover:

- a. accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);
- b. Machines damaged by misuse, accident, modification, unsuitable physical or operating

- environment, or improper maintenance by Customer or a third party;
- c. Machines with removed or altered Machine or parts identification labels;
- d. failures caused by a product for which IBM is not responsible;
- e. service of Machine alterations; or
- f. service of a Machine on which Customer is using capacity or capability, other than that authorized by IBM in writing.

65 Warranty Service Upgrade

For certain Machines, Customer may select a Service upgrade from the standard type of warranty Service for the Machine. IBM charges for the Service upgrade during the warranty period.

Customer may not terminate the Service upgrade or transfer it to another Machine during the warranty period.

When the warranty period ends, the Machine will convert to maintenance Service at the same type of Service Customer selected for warranty Service upgrade.

66 Maintenance Coverage

When Customer orders maintenance Service for Machines, IBM will inform Customer of the date on which maintenance Service will begin. IBM may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, Customer may have IBM restore it for a charge or Customer may withdraw its request for maintenance Service. However, Customer will be charged for any maintenance Service that IBM has performed at Customer's request.

67 Automatic Service Renewal

Renewable Services renew automatically for a same length contract period unless either party provides written notification (at least one month prior to the end of the current contract period) to the other of its decision not to renew.

During an automatic renewal period, Customer may terminate the Service on one month's written notice, and IBM will provide Customer a prorated credit for any unused Services for which Customer has paid in advance.

6.8 Termination and Withdrawal of a Service

Either party may terminate a Service transaction if the other materially fails to meet its obligations concerning the Service.

Customer may terminate a Service, on notice to IBM provided Customer has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents.

For a maintenance Service, Customer may terminate without adjustment charge, provided any of the following circumstances occur:

- a. Customer permanently removes the eligible Product, for which the Service is provided, from productive use within Customer's Enterprise;
- b. the eligible location, for which the Service is provided, is no longer controlled by Customer (for example, because of sale or closing of the facility); or
- c. the Machine has been under maintenance Service for at least one year and Customer gives IBM one month's written notice prior to terminating the maintenance Service.

Customer agrees to pay IBM for i) all charges for Services IBM provides and any Products and Materials IBM delivers through Service termination, and ii) reimbursable expenses IBM incurs through Service termination. If Customer terminates without cause, Customer also agrees to pay any applicable adjustment or termination charges and for expenses IBM incurs as a result of such termination (which IBM will take reasonable steps to mitigate).

IBM may withdraw a Service or support for an eligible Product on three months' written notice to Customer. If IBM withdraws a Service for which Customer has prepaid and IBM has not yet fully provided it to Customer, IBM will give Customer a prorated refund.

Any terms that by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

This Agreement, including its applicable Attachments and Transaction Documents, is the complete agreement regarding transactions by which Customer purchases Machines, licenses ICA Programs, obtains Program licenses, and acquires Services from IBM, and replaces all prior oral or written communications, representations, understandings, warranties, promises, covenants, and commitments between Customer and IBM. In entering into this Agreement, including each Attachment and Transaction Document, neither party is relying on any representation that is not specified in this Agreement. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party accepts, on behalf of its Enterprise, the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Products and Services ordered under this Agreement are subject to it.

Agreed to:
County of Alameda, Social Services Agency

Agreed to:
International Business Machines Corporation

By Don R Edwards
Authorized signature

By Devin F. Brown
Authorized signature

Title:
Name (type or print): DON R EDWARDS

Date: 9-5-14

Customer number: 0924850

Enterprise number: 0107000

Customer address: 2000 San Pablo Avenue, 4th Floor,
Oakland, CA 94612

Title:
Name (type or print): DEVIN F. BROWN

Date: 9/5/14

Agreement number: 155492

IBM address: 2710 Gateway Oaks Drive, South
Building, Suite 200, Sacramento, CA 95833

Agreement for Exchange of Confidential Information

This Agreement for Exchange of Confidential Information (Agreement) provides protection for confidential information (Information) while maintaining each party's ability to conduct its respective business activities. Each party agrees that the following terms apply when one party (Discloser) discloses Information to the other (Recipient).

1. Disclosure

Information not marked with a restrictive legend of Discloser or disclosed orally must be identified as confidential at the time of disclosure.

Each disclosure of Information is subject to this Agreement for two years following the initial date of disclosure.

2. Obligations

Recipient agrees to use Information for the purpose for which it was disclosed or otherwise for the benefit of Discloser, and not to intentionally disclose Information other than to the following:

- a. Recipient's employees and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. Control means to own or control, directly or indirectly, over 50% of voting shares;
- b. subcontractors, financial and legal advisors, and then only to those who have a need to know; or
- c. any other party with Discloser's prior written consent.

Before disclosure to any party in (a) – (c), Recipient will have a written agreement with such party sufficient to require that party to treat Information substantially the same as described in this Agreement.

If required to disclose Information by law or court order, Recipient will endeavor to give Discloser prompt notice to allow Discloser a reasonable opportunity to obtain a protective order.

3. Disclaimers

DISCLOSER PROVIDES INFORMATION WITHOUT WARRANTIES OF ANY KIND and is not liable for any damages arising out of Recipient's use of Information disclosed under this Agreement.

This Agreement does not require either party to disclose or to receive Information, perform any work, or enter into any license, business engagement or other agreement. Neither this Agreement nor any disclosure of Information made under it grants Recipient any right or license under any trademark, copyright or patent, now or subsequently owned or controlled by Discloser. The exchange of Information under this Agreement does not create any joint or fiduciary relationship, or authorize either party to act or speak on behalf of the other.

The receipt of Information under this Agreement does not in any way preclude Recipient from:

- a. developing, manufacturing, marketing or providing to others products or services which may be competitive with products or services of Discloser;
- b. assigning its employees in any way it may choose; or
- c. entering into any business relationship with any other party or developing, manufacturing, marketing or providing products or services to others who compete with the Discloser.

Any Information regarding Discloser's future products or services is subject to change or withdrawal without notice. The development, release, and timing of any future features or functionality described for Discloser's products and services remains at Discloser's sole discretion.

Recipient may disclose, disseminate, and use Information that is already in its possession which was received by Discloser without obligation of confidentiality, developed independently, obtained from a source other than Discloser without obligation of confidentiality, publicly available when received or subsequently becomes publicly available through no fault of the Recipient, or disclosed by Discloser to another without obligation of confidentiality.

4. General

- a. **Assignment.** Neither party may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent. Any attempt to do so is void.
- b. **Termination.** Either party may terminate this Agreement by providing at least one month's written notice to the other. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.
- c. **Modification.** Only a written agreement signed by both parties can modify this Agreement.
- d. **Choice of Law.** Both parties agree to the application of the laws of the State of New York to govern, interpret, and enforce all of the parties' respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.
- e. **Import/Export Compliance.** Each party will comply with all applicable export and import laws and associated embargo and economic sanction regulations, including those of the United States, that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.

This Agreement, including its applicable supplements, is the complete agreement regarding the exchange of Information, and replaces all prior oral or written communications, representations, warranties, covenants, and commitments between Company and IBM regarding the exchange of Information. In entering into this Agreement, including each supplement, neither party is relying on any representation not specified in this Agreement or the applicable supplement. Additional or different terms in any written communication from Company are void.

Each party accepts the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this Agreement or a supplement made by reliable means is considered an original and ii) all disclosures of Information under this Agreement are subject to it.

Agreed to:

County of Alameda, Social Services Agency

By

Don R Edwards

Authorized Signature

Name (type or print): DON R EDWARDS

Date: 9-5-14

Identification number:

Address: 2000 San Pablo Avenue, 4th Floor,
Oakland, CA 94612

Agreed to:

International Business Machines Corporation ("IBM")

By

Devin F. Brown

Authorized Signature

Name (type or print): DEVIN F. BROWN

Date: 9/5/14

Agreement number:

IBM address: 2710 Gateway Oaks Dr., South Building,
Suite 200, Sacramento, CA 95833

International Passport Advantage Agreement

This IBM International Passport Advantage Agreement ("Agreement") governs transactions by which Customer acquires Eligible Products. Customer Originating Company and IBM Originating Company agree to coordinate the administration of this Agreement within their respective Enterprises. This Agreement is entered into with the understanding that both Customer Originating Company and IBM Originating Company are bound by its terms. Both Customer Originating Company and IBM Originating Company agree to distribute copies of this Agreement to their respective participating Enterprise companies. The Customer Originating Company is responsible for all Sites' compliance with the terms of this Agreement.

This Agreement, including any applicable Attachments, Terms of Use, and any Transaction Documents is the complete agreement regarding transactions by which Customer acquires Eligible Products, and replace any prior oral or written agreements, communications, representations, statements, understandings, warranties, promises, covenants, commitments, or undertakings between Customer and IBM concerning Passport Advantage.

If there is a conflict among the terms of this Agreement, Attachments, Terms of Use, and Transaction Documents, those of an Attachment prevail over those of this Agreement, those of Terms of Use prevail over those of an Attachment and this Agreement, and the terms of a Transaction Document prevail over those of this Agreement, the Terms of Use, and an Attachment.

Once this Agreement is accepted, 1) unless prohibited by applicable law or specified otherwise, any reproduction of it or a Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and 2) all Eligible Products ordered under this Agreement are subject to it.

1 General

11 Agreement Structure

This Agreement is organized in six Parts:

Part 1 – General includes terms regarding Agreement Structure, Attachments and Transaction Documents, Definitions, Acceptance of Terms, Delivery, Payment, Taxes, RSVP Level, Changes to Agreement Terms, Eligible Products, IBM Business Partners and Resellers, Intellectual Property Protection, Limitation of Liability, General Principles of Our Relationship, Agreement Termination, Compliance Verification, and Geographic Scope and Governing Law.

Part 2 – Warranties includes terms regarding Warranty for IBM Programs, Warranty for IBM Software Subscription and Support and Selected Support, Warranty for IBM Machine Components of IBM Appliances, Warranty for IBM SaaS, and Extent of Warranty.

Part 3 – Programs and Subscription and Support includes terms regarding IBM Programs, Programs in a Virtualization Environment, Fixed Term Licensing, CEO Product Categories, and Software Subscription and Support and Selected Support.

Part 4 – Appliances includes terms regarding Virtual Appliance, Appliances Comprising Both Program and Machine Components, Program Components and Machine Components.

Part 5 – IBM SaaS includes terms regarding Ownership, Customer's Right to Use, Subscription to IBM SaaS, IBM SaaS Technical Support, Content, and Termination of IBM SaaS.

Part 6 – Reserved.

12 Attachments and Transaction Documents

Additional terms for Eligible Products are in documents called "Attachments" and "Transaction Documents" provided by IBM. Depending upon their country of use, Attachments may have different names. In general, Attachments contain terms that may apply to more than one transaction, while Transaction Documents (such as a supplement, schedule, invoice, exhibit, or addendum) contain specific details and terms related to an individual transaction. Customer may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

13 Definitions

Additional Site – any Site that subsequently enrolls under this Agreement.

Anniversary – the first day of the month that follows the anniversary of the Effective Date, unless the Effective Date is the first day of a month, in which event the anniversary of the Effective Date is the Anniversary.

Appliance – an Eligible Product, designed for a particular function and not for general purpose computing tasks, that may be a Program (in the case of a “Virtual Appliance”) or composed of a Program Component, a Machine Component, and any Machine Code Component that IBM may provide to Customer.

Audit Reports – a set of reports available in the IBM License Metric Tool (“ILMT”), or by another method acceptable to IBM as specified at

<http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> . These reports provide the Processor Value Unit (“PVU”) license requirements based on the Virtualization Capacity available to the Eligible Sub-Capacity Product.

CEO User – an individual to whom a machine has been assigned that is capable of copying, using, or extending the use of Programs in a CEO Product Category.

Content – information, software, and data, including, without limitation, any Personal Data, hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets, or servlets that are created, provided, uploaded, or transferred by Customer and any user authorized by Customer.

Customer – the customer Enterprise company that is ordering Eligible Products.

Customer Originating Company – the legal entity within Customer’s Enterprise of which the entity that identifies itself as the “Originating Site” on an “IBM International Passport Advantage Enrollment Form” is a part.

Customer-set-up Machine Component – an IBM Machine Component that Customer is responsible for installing according to instructions provided with it.

Date of Installation –

- a. for a Customer-set-up Machine Component, the date on Customer’s purchase invoice or sales receipt for the Appliance is the Date of Installation, unless IBM or Customer’s IBM reseller informs Customer otherwise.
- b. for an IBM Machine Component that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;

Effective Date – the date IBM accepts Customer’s initial order for Eligible Products, either directly from Customer or from Customer’s reseller.

Eligible Operating System Technology – an operating system for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Eligible Processor Technology – a processor technology for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Eligible Products – commercially available IBM Programs, Non-IBM Programs, Selected Support, authorizations to increase Customer’s use of a Program, IBM Trade-ups, Competitive Trade-ups, Annual IBM Software Subscription and Support Renewals, IBM Software Subscription and Support Reinstatement, Annual Third Party Software Subscription and Support Renewals, Third Party Software Subscription and Support Reinstatement, Selected Support renewals, IBM SaaS, and Appliances.

Eligible Sub-Capacity Product – a Product for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Eligible Virtualization Environment – a server or a group of servers cooperating as a single computing entity that contain an Eligible Processor Technology, an Eligible Operating System Technology, and an Eligible Virtualization Technology.

Eligible Virtualization Technology – a virtualization technology for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> . An Eligible Virtualization Technology is capable of restricting processor capacity to a subset of the total physical capacity, sometimes referred to as partition, LPAR, or virtual machine.

Engineering Change – an update to modify certain aspects of the design of an installed Machine Component, including without limitation the design of a certain Machine Component part(s) or Machine Code Component.

Enterprise – any legal entity that, by more than 50%, owns, is owned by, or is under common ownership with the Originating Company.

Fixed Term – a definite period of time specified by IBM in a Transaction Document, for example, in a Program's PoE.

Full Capacity – The total number of physical processor cores activated and available for use on a server.

IBM – the IBM Enterprise company that is providing Eligible Products.

IBM Business Partner – an organization with which IBM has signed agreements to promote, market, and, in some instances, support certain Eligible Products.

IBM Machine Component – a Machine Component bearing an IBM logo.

IBM Originating Company – the legal entity within International Business Machines Corporation's Enterprise that accepts the Customer Originating Company's orders.

IBM Program – a Program acquired under this Agreement and subject to the IPLA, including its LI.

IBM Software as a Service ("IBM SaaS") – offerings IBM makes available to Customer remotely through the Internet providing access to (i) functionality of Programs, (ii) infrastructure, and (iii) technical support. IBM SaaS is not a Program but may require Customer to download enabling software in order to use it. IBM SaaS is an Eligible Product.

IBM SaaS User – one who accesses IBM SaaS using a user account identification and password associated with Customer's IBM SaaS account and provided by Customer.

IBM Software Subscription and Support – software subscription and support provided for IBM Programs licensed under the IPLA. See 3.5.1 **IBM Software Subscription and Support** for further description.

IPLA – IBM's International Program License Agreement. The IPLA is included with each IBM Program in the Program's directory, in a library identified as "License," a booklet, or on a CD. It is also available on the Internet at <http://www.ibm.com/software/sla/> and from IBM and its resellers.

License Information ("LI") – a document that provides information and any additional terms specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI can also be found in the Program's directory, by the use of a system command, or as a booklet included with the Program.

Machine Code Component – microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, diagnostics, and any other code (all subject to any exclusions in the license provided with it) delivered with an IBM Machine Component for the purpose of enabling the Machine Component's function, as stated in its Specifications.

Machine Component – a hardware device, features, conversions, Upgrades, elements, or accessories, or any combination of them. The term "Machine Component" includes an IBM Machine Component and any non-IBM Machine Component (including other equipment) that IBM may provide to Customer.

Non-IBM Program – a Program that is governed by the terms of the third party end user license agreement that accompanies it. IBM is not a party to the third party end user license agreement and assumes no obligations under it.

Originating Company – the legal entity that is authorized to execute and administer this Agreement on behalf of an Enterprise. The Originating Company need not be a "company" and may be the entire Enterprise.

Originating Site – Originating Company Site.

Personal Data – any information that can be used to identify a specific individual, such as name, email address, home address, or phone number that is provided to IBM to store, process, or transfer on Customer's behalf.

Processor Chip – Electronic circuitry containing one or more Processor Cores that plugs into a Processor Socket.

Processor Core – A physical functional unit within a computing device that interprets and executes program instructions and consists of at least one instruction control unit and one or more arithmetic and logic units. A multi-core technology allows two or more Processor Cores to be active on a single Processor Chip. A System z Integrated Facility for Linux (IFL) engine is considered a single Processor Core.

Processor Socket – Electronic circuitry that accepts a Processor Chip.

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Processor Value Unit ("PVU") – A metric used by IBM to assign a value to a Processor Core. The Processor Value Unit licensing model is described at http://www.ibm.com/software/lotus/passportadvantage/pvu_licensing_for_customers.html.

Program – the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

Program Component – an IBM Program or Non-IBM Program that is preinstalled on a Machine Component.

Proof of Entitlement ("PoE") – the document in which IBM specifies an Eligible Product's level of authorized use. This PoE, supported by Customer's matching paid invoice or receipt, is evidence of Customer's level of authorized use.

RSVP – Relationship Suggested Volume Price.

Selected Program – a Non-IBM Program or an IBM Program licensed under the terms of the IBM License Agreement for Non-Warranted Programs.

Selected Support – Support for specified Selected Programs.

Service Provider – an entity that provides information technology services for end user customers, either directly or through a reseller.

Site – any defined entity, such as a physical location or organizational unit, e.g., a department, division, subsidiary or cost center, of Customer's Enterprise and for which IBM assigns a Passport Advantage Site Number.

Specifications – information specific to a Machine Component. IBM Machine Component Specifications are in a document entitled "Official Published Specifications."

Sub-Capacity Licensing – Licensing of Eligible Sub-Capacity Products based on Virtualization Capacity.

Subscription Period – the time during which IBM SaaS is made available to Customer as specified in the applicable Transaction Document.

SVP – Suggested Volume Price.

Term – the period that begins either on the date IBM accepts Customer's initial order (in the case of the initial Term) or on the Anniversary (in the case of subsequent Terms), and ends on the day immediately prior to the next Anniversary.

Terms of Use ("ToU") – additional terms under which IBM makes IBM SaaS offerings available to Customer and viewed at <http://www.ibm.com/software/sla/sladb.nsf/sla/tou/>.

Third Party Software Subscription and Support – software subscription and support provided under the third party's terms for Non-IBM Programs. See **3.5.1 Software Subscription and Support** for further description.

Upgrade – a change to a Machine Component to modify, add, remove, enable, or disable a certain Machine Component resource or function. Each such change can be accomplished through a Machine Component conversion, or through the conversion, addition, removal, or exchange of a Machine Component's feature(s), but only to the extent announced and supported by IBM for the Machine Component.

Virtualization Capacity – the highest peak processor capacity available to an Eligible Sub-Capacity Product when deployed on an Eligible Virtualization Environment in accordance with the rules specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>.

1.4 Acceptance of Terms

The Customer Originating Company and thereafter each of its participating Enterprise companies accepts this Agreement without modification by submitting an IBM International Passport Advantage Enrollment Form to IBM or the reseller(s) from whom they have chosen to acquire Eligible Products, as applicable. This Agreement is effective on the Effective Date and remains in effect until the Customer Originating Company or the IBM Originating Company terminates it in accordance with **Section 1.15 Agreement Termination**.

An Eligible Product becomes subject to this Agreement when IBM accepts Customer's order by i) sending Customer a Transaction Document, ii) making the Program or IBM SaaS available to Customer or, when applicable, shipping the Appliance, or iii) providing the support, service, or solution.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

1.5 Delivery

Transportation charges, if applicable, will be specified in a Transaction Document. For Programs IBM provides to Customer in tangible form, IBM fulfills its shipping and delivery obligations upon delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Customer and IBM.

1.6 Payment

- a. When Customer acquires Eligible Products from a reseller, Customer pays reseller directly.
- b. When Customer acquires Eligible Products from IBM, Customer agrees to pay as IBM specifies in its invoice or equivalent document, including any late payment fee; and
- c. The amount payable for a Program license may either be a one-time charge or a charge for a Fixed Term, depending on the type of license.

1.7 Taxes

If, as a result of Customer moving, accessing, or using an Eligible Product across a border, any authority imposes a customs duty, tax, levy or fee (including withholding taxes for the import or export of any such Eligible Product), then Customer agrees that it is responsible for, and will pay, any such customs duty, tax, levy or fee. This excludes those taxes based on IBM's net income.

1.8 RSVP Level

The initial "RSVP Level" is established by the point value of the initial order. If Customer acquires additional Eligible Products during a Term, Customer may attain higher RSVP Levels. The higher RSVP Level applies only when Customer acquires additional Eligible Products after the higher level is attained, except where the point value of an individual order by itself exceeds the point requirement for a higher "SVP Level." In such case, the higher SVP Level applies to the order.

At the first and each subsequent Anniversary, the RSVP Level is set, based on the Eligible Products Customer has acquired during the previous Term. If, in a subsequent Term, the point value of the Eligible Products Customer acquires during that Term is less than the point value necessary to maintain the current RSVP Level, then at the next Anniversary the RSVP Level will be reduced to reflect the level at which Customer is currently acquiring Eligible Products but not by more than one RSVP Level.

SVP/RSVP Level Table:

SVP/RSVP Level	BL	D	E	F	G	H
Points	<500	500	1,000	2,500	5,000	10,000

1.9 Changes to Agreement Terms

IBM may change the terms of this Agreement by giving the Customer Originating Company three months' written notice by letter or e-mail. Such change applies as of the date IBM specifies in the notice. Customer agrees that Customer has consented to any such change if Customer does not notify IBM in writing prior to the effective date specified in IBM's written notice that Customer disagrees with the change.

Otherwise, for a change to be valid, both the Customer Originating Company and the IBM Originating Company must sign it. Additional or different terms in any order or written communication from Customer are void.

1.10 Eligible Products

Each orderable part number for an Eligible Product is assigned a point value, which may be zero. This point value is used to determine Customer's RSVP or a transaction's SVP, as applicable. See Section **1.8 RSVP Level** above.

IBM may add or withdraw Eligible Products or change an Eligible Product's SVP or point value at any time. If IBM withdraws an Eligible Product from marketing, Customer will no longer be able to acquire it under this Agreement.

If IBM withdraws a Program or a version of a Program from marketing, Customer may not increase its level of use, beyond the authorizations already acquired, on or after the effective date of withdrawal without IBM's prior written consent, which IBM will not unreasonably withhold.

1.11 IBM Business Partners and Resellers

In addition to acquiring Eligible Products from IBM, the Originating Site and the Additional Sites may acquire them from IBM Business Partners and resellers. Not all resellers, however, are authorized to resell all Eligible Products.

When Customer orders Eligible Products from Customer's IBM Business Partner(s) or reseller(s), IBM is not responsible for 1) their actions, 2) any additional obligations they have to Customer, or 3) any products or services that they supply to Customer under their agreements. When Customer acquires Eligible Products from an IBM Business Partner or reseller, the IBM Business Partner or reseller sets the charges and payment terms.

1.12 Intellectual Property Protection

For purposes of this Section 1.12, the term "Product" means an IBM Program, Machine Code Component, or IBM Machine Component.

1.12.1 Third Party Claims

If a third party asserts a claim against Customer that a Product infringes that party's patent or copyright, IBM will defend Customer against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved in advance by IBM, provided that Customer:

- a. promptly notifies IBM in writing of the claim;
- b. allows IBM to control, and cooperate with IBM in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with the Product's license and other terms and Customer's obligations under Remedies below.

1.12.2 Remedies

If such a claim is made or appears likely to be made, Customer agrees to permit IBM, in IBM's discretion, to: i) enable Customer to continue to use the Product; ii) modify it; or iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, Customer agrees to immediately discontinue use of the Product and return it and all copies to IBM on IBM's written request. IBM will then give Customer a credit equal to the amount Customer paid for the returned Product (if the Product is subject to Fixed Term charges, up to twelve months' charges).

1.12.3 Claims for Which IBM is Not Responsible

IBM has no obligation regarding any claim arising from or related to any of the following:

- a. anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. modification of a Product by Customer or a third party on Customer's behalf;
- c. a Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, when a claim could have been avoided or the risk of a claim reduced by using the current version or release;
- d. the combination, operation, or use of the Product with any program, hardware device, data, apparatus, method, or process;
- e. the distribution, operation, or use of the Product outside Customer's Enterprise or for the benefit of any third party; or
- f. Separately Licensed Code, if any, as identified in the LI for the Product.

The LI for the Product or other documents may permit Customer to copy, modify, or redistribute all or portions of the Product without paying additional licensing fees to IBM. The indemnification obligation under this Agreement only applies to copies of the Product provided to Customer by IBM and additional copies expressly authorized in a PoE. IBM has no obligation for claims relating to copies of the Product

neither provided by IBM nor specifically authorized by a POE, even if permitted by the LI for the Product or other documents.

This Intellectual Property Protection section states IBM's entire obligation and Customer's exclusive remedy regarding any third party intellectual property claims. This Intellectual Property section does not obligate in any manner any third-party supplier of code (including Separately Licensed Code) included with or part of the Product.

1.13 Limitation of Liability

The limitations and exclusions in this **Section 1.13 (Limitation of Liability)** apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

1.13.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Eligible Product or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of U.S. \$100,000 (or equivalent in local currency) or the charges (if the Eligible Product is IBM SaaS or is subject to Fixed Term charges, up to 12 months' charges) Customer paid for the Eligible Product that is the subject of the claim.

This limit also applies to any of IBM's Eligible Product developers and suppliers. It is the maximum for which IBM and its Eligible Product developers and suppliers are collectively responsible. Damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable are not subject to a cap on the amount of damages.

1.13.2 Items for Which IBM Is Not Liable

UNDER NO CIRCUMSTANCES IS IBM, ITS ELIGIBLE PRODUCT DEVELOPERS, OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

- a. **LOSS OF, OR DAMAGE TO, DATA;**
- b. **SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**
- c. **LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

1.14 General Principles of Our Relationship

1.14.1 Notices and Communications

To the extent permissible under applicable law, the parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

1.14.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments without obtaining Customer's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

Customer agrees that Eligible Products are for use within Customer's Enterprise only and may not be resold, rented, leased, or transferred to third parties. Any attempt to do so in violation of these provisions is void.

1.14.3 Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology products and services. IBM is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Eligible Products that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular Eligible Products under this Agreement meets

the requirements of such laws. Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate law applicable to that party.

Each party agrees to comply with all applicable export and import laws and regulations including without limitation United States embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

1.14.4 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any such claim and all respective rights related to the claim lapse.

1.14.5 Other Principles of Our Relationship

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Eligible Product under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Customer authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors, IBM Business Partners, and resellers) to store and use Customer's business contact information wherever they do business, in connection with IBM Eligible Products or in furtherance of IBM's business relationship with Customer.
- e. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except as described in section 1.12 (Intellectual Property Protection) above or permitted in Section 1.13 (Limitation of Liability) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- f. Customer is responsible for selecting the Eligible Products that meet its needs and for the results obtained from the use of the Eligible Products, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- g. Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties.
- h. Where approval, acceptance, consent, or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. Customer agrees that their use of IBM SaaS will comply with the IBM acceptable use policy at <http://www.ibm.com/services/us/imc/html/aup.html> and applicable data protection laws.
- k. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.
- l. In entering into this Agreement, including each Attachment, ToU, and Transaction Document, neither party is relying on any representation that is not specified in this Agreement, including without limitation any representations concerning: i) performance or function of any Eligible Product, other than as expressly warranted in this Agreement; ii) the experiences or recommendations of other parties; or iii) any results or savings that Customer may achieve.

1.15 Agreement Termination

The Customer Originating Company may terminate this Agreement without cause on one month's written notice.

The IBM Originating Company may terminate this Agreement on three months' written notice. If Customer acquired or renewed either IBM Software Subscription and Support for any IBM Programs or IBM SaaS prior to the notice of termination, IBM may either continue to provide IBM Software Subscription and Support to Customer for those Programs or those IBM SaaS offerings for the remainder of the current term or give Customer a prorated refund. If Customer acquired or renewed Third Party Software Subscription and Support for any Non-IBM Programs prior to the notice of termination, the third party may continue to provide Third Party Software Subscription and Support to Customer for that Non-IBM Program license for the remainder of the current term. If the third party does not do so, Customer may obtain a prorated refund.

The Customer Originating Company will be considered to have terminated this Agreement if neither it nor any of its participating Enterprise companies have placed orders for Eligible Products for 24 consecutive months nor have software subscription and support in effect.

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

Any terms of this Agreement that by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

1.16 Compliance Verification

For purposes of this **Section 1.16 (Compliance Verification)**, "Passport Advantage Terms" means 1) this Agreement and applicable Attachments, Transaction Documents, and Terms of Use provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (<http://www.ibm.com/softwarepolicies/>), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this **Section 1.16** remain in effect during the period the Eligible Product is in the possession or control of Customer, and for two years thereafter.

1.16.1 Verification Process

Customer agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Customer's use of all Eligible Products is in compliance with the Passport Advantage Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Customer is responsible for 1) ensuring that it does not exceed its authorized use, and 2) remaining in compliance with Passport Advantage Terms.

Upon reasonable notice, IBM may verify Customer's compliance with Passport Advantage Terms at all Sites and for all environments in which Customer uses (for any purpose) Eligible Products subject to Passport Advantage Terms. Such verification will be conducted in a manner that minimizes disruption to Customer's business, and may be conducted on Customer's premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

1.16.2 Resolution

IBM will notify Customer in writing if any such verification indicates that Customer has used any Eligible Product in excess of its authorized use or is otherwise not in compliance with the Passport Advantage Terms. Customer agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) software subscription and support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

1.17 Geographic Scope and Governing Law

1.17.1 Geographic Scope

The terms of this Agreement apply in countries in which 1) IBM markets its Eligible Products directly or 2) its Eligible Products have been announced as otherwise available.

1.17.2 Governing Law

The rights, duties, and obligations of each party are valid only in the country in which the transaction is performed or, if IBM agrees, the country where the Eligible Product is placed in productive use, except that all licenses are valid as specifically granted.

Both parties agree to the application of the laws of the country in which the transaction is performed to govern, interpret, and enforce all of Customer's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

2 Warranties

Unless IBM specifies otherwise, the following warranties apply only in the country of acquisition.

21 Warranty for IBM Programs

The warranty for an IBM Program is stated in its license agreement.

22 Warranty for IBM Software Subscription and Support and Selected Support

IBM warrants that it provides IBM Software Subscription and Support and Selected Support using reasonable care and skill.

23 Warranty for IBM Machine Components of IBM Appliances

IBM warrants that each IBM Machine Component is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine Component is a fixed period commencing on its Date of Installation (also called "Warranty Start Date") and specified in a Transaction Document. During the warranty period, IBM provides repair and exchange service for the IBM Machine Component, without charge, under the type of service IBM designates in a Transaction Document for the IBM Machine Component. If an IBM Machine Component does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to the party from whom Customer acquired it for a refund.

For an IBM Machine Component that IBM is responsible to install, if Customer elects to install the IBM Machine Component itself or have a third party install the IBM Machine Component, IBM may inspect the IBM Machine Component at Customer's expense before providing warranty service on the IBM Machine Component. If the IBM Machine Component is not in an acceptable condition for warranty service, as solely determined by IBM, Customer may request that IBM restore it to an acceptable condition for warranty service or Customer may withdraw its request for warranty service. IBM, at its sole discretion, will determine if restoration is possible. Restoration is provided as a billable service.

If the IBM Machine Component does not function as warranted during the warranty period, refer to the service documentation that shipped with the IBM Machine Component for support assistance and problem determination procedures.

If Customer is unable to resolve the problem with the service documentation, contact IBM or the reseller to obtain warranty service. Contact information for IBM is provided in the "Warranty Information" that ships with IBM Machine Component. If Customer does not register the IBM Machine Component with IBM, Customer may be required to present proof of purchase as evidence of Customer's entitlement to warranty service.

2.4 Warranty for IBM SaaS

The warranty for IBM SaaS is stated in the Terms of Use.

2.5 Extent of Warranty

THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, AND

FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

The warranties stated in Section 2.3 will not apply to the extent that there has been misuse (including, but not limited to, use of any Machine Component capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machine Components is voided by removal or alteration of Machine Components or parts identification labels.

Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of an Eligible Product or that IBM will correct all defects.

IBM will identify IBM Eligible Products that it does not warrant.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides non-IBM Eligible Products, **WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer.

3 Programs and Subscription and Support

To acquire additional authorizations to use Programs under this Agreement, Customer must have already acquired the Program code.

3.1 IBM Programs

IBM Programs acquired under this Agreement are governed by the terms of the IPLA.

3.1.1 Versions and Platforms:

Customer may use Programs and their associated user documentation in accordance with the terms of this Agreement in any commercially available national language version up to the level of use authorized in the PoE. Customer is authorized to use the Program(s) that Customer acquires under this Agreement on any platform or operating system for which IBM currently makes Program code available under this Agreement unless the Program is designated as platform or operating system specific at the time Customer acquired it.

3.1.2 IBM Trade-ups:

Licenses for certain Programs that replace qualifying IBM Programs may be acquired for a reduced charge. Customer agrees to terminate Customer's use of the replaced IBM Programs when Customer installs the replacement Programs.

3.1.3 Competitive Trade-ups:

Licenses for certain Programs that replace qualifying Non-IBM Programs may be acquired for a reduced charge. Customer agrees to terminate Customer's use of the replaced Non-IBM Programs when Customer installs the replacement Programs.

3.1.4 Money-back Guarantee

The IPLA's "money-back guarantee" only applies the first time Customer licenses the IBM Program. If an IBM Program license is for a Fixed Term that is subject to renewal, Customer may obtain a refund only if Customer returns the Program and its PoE within the first 30 days of its initial term. The IPLA's "money-back guarantee" does not apply to a Program Component of an Appliance.

3.1.5 Conflict between the Terms of this Agreement and those of the IPLA

If there is a conflict between the terms of this Agreement, including its Attachments and Transaction Documents and those of the IPLA, including its LI, the terms of this Agreement prevail. The IPLA and its LIs are available on the Internet at <http://www.ibm.com/software/sla>.

3.2 Programs in a Virtualization Environment

3.2.1 Authorizations

- a. A PoE must be acquired for the total number of PVUs associated with the Virtualization Capacity available to an Eligible Sub-Capacity Product.
- b. Prior to an increase in an Eligible Sub-Capacity Product's Virtualization Capacity, Customer must first acquire sufficient additional authorizations, including IBM Software Subscription and Support, if applicable, to cover that increase.

- c. IBM does not give credits or refunds for charges already due or paid if an Eligible Product's use falls below the authorized level of use.

3.2.2 IBM's Responsibilities

IBM will make available and authorize Customer to use:

- a. the ILMT at no charge, when ordered by Customer or Customer's IBM Reseller. IBM provides the ILMT to Customer for Customer's compliance with these Sub-Capacity Licensing terms; and
- b. the information center included with the ILMT to aid Customer's compliance with these Sub-Capacity Licensing terms.

Customer may make copies of the ILMT and information center for Customer's compliance with these Sub-Capacity Licensing terms.

3.2.3 Customer's Responsibilities under Sub-Capacity Licensing Terms

Customer agrees to:

- a. install and configure the most current version of ILMT in accordance with the ILMT information center, within 90 days of Customer's first Eligible Sub-Capacity Product deployment on an Eligible Virtualization Environment, to enable Customer to collect Virtualization Capacity data by Eligible Sub-Capacity Product and generate Audit Reports in accordance with these Sub-Capacity Licensing terms. Exceptions to this requirement are:

- (1) when ILMT does not yet provide support for the Eligible Virtualization Environment
- (2) if Customer's Enterprise has fewer than 1,000 employees and contractors, Customer is not a Service Provider, and Customer has not contracted with a Service Provider to manage Customer's Eligible Virtualization Environment
- (3) if the total physical capacity of Customer's Enterprise servers with an Eligible Virtualization Environment, measured on a Full Capacity basis, but licensed using sub-capacity terms is less than 1,000 PVUs.
- (4) when Customer's servers with Eligible Sub-Capacity Products are licensed to the Full Capacity of the servers

For these exceptions, use of ILMT, while recommended, is not required for Sub-Capacity Licensing. In lieu of ILMT, Customer is required to manually manage and track Customer's Eligible Virtualization Environment, and manually prepare Audit Reports documenting the Virtualization Capacity by Eligible Sub-Capacity Product for Customer's Eligible Virtualization Environment during each calendar or fiscal quarter. These Audit Reports must contain the information listed in the example Audit Report available at

<http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>. These Audit Reports must be prepared as frequently as is required to maintain a history of increases to Virtualization Capacity, but not less often than once per quarter, and must be maintained for at least two years to demonstrate ongoing compliance with these Sub-Capacity Licensing terms;

- b. promptly install new versions, releases, modifications, or code corrections ("fixes") of the ILMT that IBM makes available. Customer must subscribe to Tivoli Support notifications via <http://www.ibm.com/support/mynotifications> in order to be notified when these become available;
- c. not alter, modify, omit, delete, or otherwise misrepresent by any means, directly or indirectly, the:
 - (1) ILMT audit records;
 - (2) ILMT, except for changes provided by IBM; or
 - (3) Audit Reports that Customer submits to IBM.
- d. generate, using ILMT or manually, Audit Reports at least each calendar or fiscal quarter and retain for a period of not less than two years the Audit Reports and make these reports available to IBM upon notice as specified in Section 1.16. Failure to generate Audit Reports or make Audit Reports available to IBM will result in charging for Eligible Sub-Capacity Products under Full Capacity terms;
- e. assign a person in Customer's organization with authority to manage and promptly resolve any questions on Audit Reports or inconsistencies between Audit Report contents, license entitlement, or ILMT configuration;
- f. promptly place an order with IBM or Customer's IBM reseller if Audit Reports reflect Eligible Sub-Capacity Product use in excess of Customer's authorized level. IBM Software Subscription and

Support coverage will be determined to begin at the time Customer exceeded Customer's authorized level.

3.2.4 Additional Terms

Product deployments that are not able to meet these Sub-Capacity Licensing requirements must be licensed using Full Capacity terms.

3.3 Fixed Term Licensing

Fixed Term Licenses have a term that begins on the date that Customer's order is accepted by IBM; on the calendar day following the expiration of a prior Fixed Term; or on the calendar day following the Anniversary date, as applicable.

3.3.1 Automatic Renewal of Fixed Term Licenses

Customer may renew Customer's expiring Fixed Term License by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING FIXED TERM LICENSES ARE AUTOMATICALLY RENEWED FOR THE SAME DURATION AS THE EXPIRING TERM UNDER THE TERMS OF THIS AGREEMENT AND AT THE THEN CURRENT RENEWAL CHARGES FOR SUCH PROGRAM LICENSES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM CUSTOMER OR THROUGH CUSTOMER'S RESELLER, AS APPLICABLE, CUSTOMER'S WRITTEN NOTIFICATION THAT CUSTOMER DOES NOT WANT TO RENEW. CUSTOMER AGREES TO PAY SUCH RENEWAL CHARGES.

If Customer chooses not to renew the Fixed Term License, Customer agrees to discontinue use of the Program on the expiration date.

If, after the expiration date, Customer chooses to resume use of the Program, Customer must pay charges associated with an initial Fixed Term License rather than a Fixed Term License renewal.

3.3.2 Anniversary Coordination

For Fixed Terms of six months or more only, initial or subsequent Fixed Terms entered into on a date other than the Anniversary may be renewed at the next Anniversary for an additional period, at a prorated renewal charge, in order to extend the Fixed Term to the following Anniversary.

3.3.3 Withdrawal of Fixed Term License for a particular Program

If IBM withdraws Fixed Term licensing for a particular IBM Program, Customer understands that

- a. Customer may not renew the Fixed Term License for that IBM Program; and
- b. if Customer renewed the Fixed Term License for that IBM Program prior to the notice of withdrawal, Customer may either (a) continue to use the Program under the Fixed Term License terms until the end of the then current Fixed Term or (b) obtain a prorated refund.

3.4 CEO Product Categories

"CEO Product Categories" (groupings of Eligible Products) are acquired on a per-user basis. Customer must acquire Customer's first CEO Product Category ("Primary Product Category") for all CEO Users within Customer's Enterprise and for not less than the number of CEO Users specified in the CEO Product Categories Table at <http://www.ibm.com/software/passportadvantage>.

Customer may acquire additional CEO Product Categories if Customer meets the minimum number of CEO Users requirement specified in the CEO Product Category in the CEO Product Categories Table at <http://www.ibm.com/software/passportadvantage>. However, Customer need not acquire additional CEO Product Categories for all CEO Users within Customer's Enterprise.

A CEO User may use any or all of the Programs included in a chosen CEO Product Category. But all IBM Programs that are used for client access must be acquired from the same CEO Product Category as the server Program they access.

CEO Product Categories: Additions and Deletions

IBM may add Eligible Products to or delete Eligible Products from any CEO Product Category at any time. If IBM deletes an Eligible Product from a CEO Product Category, Customer may continue to use the deleted Eligible Product but Customer may not exceed the number of CEO Users enrolled prior to the deletion.

Increasing the number of CEO Users

In the event Customer increases the number of CEO Users, Customer must acquire an authorization to use the CEO Product Category for each new CEO User.

Decreasing the number of CEO Users

Customer will notify IBM in writing prior to Customer's next Anniversary in the event Customer's total number of CEO Users decreases. Decreases may result from a reorganization, restructuring, or sale of one or more of Customer's Sites. A reduction in the number of CEO Users of a temporary or seasonal nature does not qualify as a decrease. Following a decrease in the number of CEO Users, a lower SVP Level may result. If the level of authorized use of a CEO Product Category drops below the minimum number of CEO Users applicable to that CEO Category, Customer may not renew IBM Software Subscription and Support on a CEO Product Category basis.

3.5 Software Subscription and Support and Selected Support

3.5.1 Software Subscription and Support

- a. For purposes of this Agreement, "software subscription and support" means both IBM Software Subscription and Support and Third Party Software Subscription and Support. IBM provides IBM Software Subscription and Support with each IBM Program licensed under the IPLA. IBM Software Subscription and Support is a single offering not available as separate components. IBM does not provide IBM Software Subscription and Support for (i) Non-IBM Programs or for (ii) Programs that are licensed under the IBM License Agreement for Non-Warranted Programs (together "Selected Programs").
- b. IBM Software Subscription and Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.
- c. While IBM Software Subscription and Support is in effect for an IBM Program license:
 - (1) IBM will make available to Customer IBM Program defect corrections, restrictions, and bypasses, if any, that it develops.
 - (2) IBM will make available to Customer and authorize Customer to use the most current commercially available version, release, or update, should any be made available.
 - (3) IBM provides Customer assistance for Customer's i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions (together "Support"). Such Support for a particular version or release of an IBM Program is available only until IBM or the third party, as applicable, withdraws Support for that IBM Program's version or release. When Support is withdrawn, Customer must upgrade to a supported version or release of the IBM Program in order to continue to receive Support. The IBM "Software Support Lifecycle" policy is available at <http://www.ibm.com/software/info/supportlifecycle/>.
 - (4) IBM provides Support via electronic access and, if available, telephone, only to Customer's information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Customer's IBM support center. (This assistance is not available to Customer's end users.) IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Handbook for details at <http://www.ibm.com/software/support/>.
 - (5) IBM may request that Customer allow it to remotely access Customer's system to assist Customer in isolating the software problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.
- d. IBM Software Subscription and Support does not include assistance for 1) the design and development of applications, 2) Customer's use of IBM Programs in other than their specified operating environment or 3) failures caused by products for which IBM is not responsible under this Agreement.

FOR THE AUTHORIZED USE OF EACH IBM PROGRAM INSTALLED AND IN SERVICE AT A CUSTOMER'S SITE, CUSTOMER HAS THE OPTION TO MAINTAIN IBM SOFTWARE SUBSCRIPTION AND SUPPORT FOR EITHER (a) ALL OF THE AUTHORIZED USE OR (b) NONE OF THE AUTHORIZED USE.

THERE IS NO OPTION FOR MAINTAINING IBM SOFTWARE SUBSCRIPTION AND SUPPORT COVERAGE FOR ONLY A PORTION OF AUTHORIZED USE INSTALLED AND IN SERVICE FOR AN IBM PROGRAM AT A CUSTOMER SITE.

CUSTOMER SHALL NOT USE ANY OF THE IBM SOFTWARE SUBSCRIPTION AND SUPPORT BENEFITS SPECIFIED IN SUBSECTION C OF THIS SECTION 3.5.1, INCLUDING THE APPLICATION OR USE OF ANY FIXES, UPDATES, OR UPGRADES, FOR IBM PROGRAMS FOR WHICH CUSTOMER HAS NOT FULLY PAID IBM SOFTWARE SUBSCRIPTION AND SUPPORT. IF CUSTOMER USES ANY OF THESE BENEFITS FOR WHICH IT HAS NOT FULLY PAID, THEN CUSTOMER AGREES TO ACQUIRE IBM SOFTWARE SUBSCRIPTION AND SUPPORT REINSTATEMENT SUFFICIENT TO COVER ALL SUCH UNAUTHORIZED USE OF SUCH BENEFITS AT THEN CURRENT APPLICABLE IBM PRICES.

3.5.2 Selected Support

Selected Programs eligible for Selected Support are listed at <http://www.ibm.com/lotus/PASelectedsupportprograms>.

Selected Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.

While Selected Support is in effect for a Selected Program:

- a. IBM will make available to Customer Selected Program defect corrections, if any, that it develops.
- b. IBM provides Customer assistance for Customer's 1) routine, short duration installation and usage (how-to) questions; and 2) code related questions. Selected Support for a particular version or release of a Program is available only until IBM withdraws Selected Support for that Program's version, release, or modification. When such Selected Support is withdrawn, Customer must upgrade to a supported version or release of the Program in order to continue to receive such support. The IBM "Software Support Lifecycle" policy does not apply to Selected Support.
- c. IBM may provide Customer with assistance in designing and developing applications based on Customer's subscription level.
- d. IBM may provide assistance via electronic access and, if available, telephone, depending on Customer's location and the subscription level Customer acquires. Such assistance is provided only to Customer's information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Customer's IBM support center. Consult the IBM Software Support Handbook for details applicable to Selected Support at <http://www.ibm.com/software/support>.
- e. IBM may request that Customer allow it to remotely access Customer's system to assist Customer in isolating the software problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.

IBM does not provide licenses under this Agreement for Selected Programs.

3.5.3 Customer Data and Databases

To assist Customer in isolating the cause of a problem with a Program under either IBM Software Subscription and Support or Selected Support, IBM may request that Customer 1) allow IBM to remotely access Customer's system or 2) send Customer information or system data to IBM. IBM uses information about errors and problems to improve its products and services, and assist with its provision of related support offerings. For these purposes, IBM may use IBM entities and subcontractors (including in one or more countries other than the one in which Customer is located), and Customer authorizes IBM to do so.

Customer remains responsible for 1) any data and the content of any database Customer makes available to IBM, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Customer will not send or provide IBM access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that IBM may incur relating to any such information mistakenly provided to IBM or the loss or disclosure of such information by IBM, including those arising out of any third party claims.

3.5.4 Automatic Annual Renewal of Software Subscription and Support and Selected Support

Customer may renew Customer's expiring software subscription and support or Selected Support by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT AND SELECTED SUPPORT ARE AUTOMATICALLY RENEWED TO THE NEXT ANNIVERSARY UNDER THE TERMS OF THIS AGREEMENT AND AT THE THEN CURRENT RENEWAL CHARGES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM CUSTOMER OR THROUGH CUSTOMER'S RESELLER, AS APPLICABLE, CUSTOMER'S WRITTEN NOTIFICATION THAT CUSTOMER DOES NOT WANT TO RENEW. CUSTOMER AGREES TO PAY SUCH RENEWAL CHARGES.

Software subscription and support or Selected Support acquired or renewed on the Anniversary is renewable for an additional term of 12 full months.

Software subscription and support or Selected Support acquired on a date other than the Anniversary is renewable at the next Anniversary for an additional term of less than 12 full months for a pro-rated charge, thereby extending the coverage to the following Anniversary.

To reinstate any expired software subscription and support coverage, Customer must acquire IBM Software Subscription and Support Reinstatement or Third Party Software Subscription and Support Reinstatement, as applicable.

3.5.5 Withdrawal of Software Subscription and Support or Selected Support for a Particular Program

If IBM or the third party, as applicable, withdraws software subscription and support or Selected Support for a particular Program, Customer understands that

- a. IBM will not make software subscription and support renewal or Selected Support renewal available for that Program; and
- b. if Customer renewed IBM Software Subscription and Support for that IBM Program license or Selected Support for a Selected Program license prior to the notice of withdrawal, IBM may either continue to provide IBM Software Subscription and Support or Selected Support to Customer for that Program license until the end of the then current term or Customer may obtain a prorated refund. If Customer renewed Third Party Software Subscription and Support for that Non-IBM Program prior to the notice, the third party may continue to provide Third Party Software Subscription and Support to Customer for that Non-IBM Program license until the end of the then current term. If the third party does not do so, Customer may obtain a prorated refund.

4 Appliances

4.1 Virtual Appliance

Customer is licensed to use the Program(s) pursuant to the terms of this Agreement.

4.2 Appliances Comprising Both Program and Machine Components

IBM provides Appliances comprising both Program Components and Machine Components as a single product. Customer shall not use either such component independently of the Appliance of which it is a part for any purpose.

4.3 Program Components

Customer is licensed to use the Program Component(s) pursuant to the terms of this Agreement, but only on the Machine Component supplied by IBM or an authorized reseller or any replacement of a Machine Component provided to Customer by IBM or an authorized reseller. Customer may not transfer its license to use the Program Component(s) to another Enterprise.

4.4 Machine Components

4.4.1 Production Status

Each IBM Machine Component is manufactured from parts that may be new or used. In some cases, an IBM Machine Component may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms described in Part 2.3 apply.

4.4.2 Title and Risk of Loss

When Customer acquires a Machine Component directly from IBM, IBM transfers title to a Machine Component to Customer or, if applicable, Customer's lessor, upon payment of all the amounts due. For a feature, conversion, or another type of upgrade acquired for a Machine Component, IBM reserves transfer of title until IBM receives payment of all the amounts due and, as applicable, all removed parts, which become IBM's property.

For each Machine Component, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine Component will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, Customer must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

4.4.3 Installation

a. Machine Component Installation

- (1) Customer agrees to provide an environment meeting the requirements for the Machine Component as specified in its published documentation.
- (2) Customer is responsible for installing a Customer-set-up Machine Component and a non-IBM Machine Component according to instructions provided by IBM or the Machine Component's manufacturer.
- (3) For a Machine Component that IBM is responsible for installing, IBM has standard installation procedures. IBM will successfully complete these procedures before it considers a Machine Component (other than a Machine Component for which Customer defers installation or a Customer-set-up Machine Component) installed. For an IBM Machine Component that IBM is responsible to install, if the IBM Machine Component is not made available for IBM to install within six months from shipment, installation will be subject to an installation charge.

b. Upgrades and Engineering Changes

- (1) IBM sells Upgrades for installation on Machine Components, and, in certain instances, only for installation on a designated, serial-numbered Machine Component. Within 30 days of the shipment of an Upgrade, Customer agrees to install the Upgrade or, if IBM is responsible for the installation, to allow IBM to install the Upgrade. Certain Upgrade orders may be terminated at IBM's discretion if not made available for IBM to install within 30 days of shipment, in which case Customer must return the Upgrade at Customer's expense. In all cases, if the Upgrade is not made available for IBM to install within six months from the date IBM ships the Upgrade, installation will be subject to an installation charge.
- (2) Customer agrees to allow IBM to install mandatory Engineering Changes (such as those required for safety) on a Machine Component within 30 days of IBM's notice to Customer unless otherwise agreed to by the parties.

Many Upgrades and Engineering Changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the Upgrade or Engineering Change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install Upgrades and Engineering Changes and ii) transfer ownership and possession of removed parts to IBM. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance service status of the replaced part.

4.4.4 Machine Code Component

A Machine Code Component is licensed under the terms and restrictions of the Machine Code license agreement (e.g., IBM License Agreement for Machine Code, IBM Agreement for Licensed Internal Code, or an equivalent) provided with the Machine Code Component. Customer acceptance of the terms of this Agreement includes acceptance of IBM's Machine Code license agreements, current versions of which are available at the following URL:

http://www.ibm.com/servers/support/machine_warranties/support_by_product.html or by contacting an IBM representative. Machine Code license agreements may be amended by IBM from time to time. Such amended license terms will apply only to Machine Code Component that is supplied after such amended terms become effective.

A Machine Code Component is licensed only for use to enable a Machine Component to function in accordance with its Specifications and only for the capacity and capability for which Customer has acquired IBM's written authorization. Customer agrees to use the Machine Code Component only as specified in this Agreement and as may be further authorized or restricted in its applicable license agreement. Without limiting additional restrictions in the applicable license, Customer may not

- a. otherwise copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) the Machine Code Component, except as IBM may authorize in the Machine Component's user documentation or in writing to Customer;
- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the Machine Code Component unless expressly permitted by applicable law without the possibility of contractual waiver;
- c. sublicense or assign the license for the Machine Code Component; or
- d. lease the Machine Code Component or any copy of it.

International Business Machines Corporation, one of its subsidiaries, or a third party owns the Machine Code Component including all copyrights in the Machine Code Component and all copies of the Machine Code Component (this includes the original Machine Code Component, copies of the original Machine Code Component, and copies made from copies). The Machine Code Component is copyrighted and licensed (not sold).

Title will not be transferred when IBM supplies features, conversions, or upgrades that consist solely of Machine Code Component.

The capacity of certain Machine Components may be limited by technological measures in the Machine Code Component. Customer agrees to IBM's implementation of such technological measures to limit Machine Component capacity.

4.4.5 Delivery

Delivery dates for Appliances with Machine Components are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document.

5. IBM SaaS

Customer agrees that IBM is not providing it with access to the Internet in order to use IBM SaaS and that Customer remains responsible for Internet access.

Customer acknowledges that International Business Machines Corporation and its subsidiaries (1) do not control the transfer of data over telecommunications facilities, including the Internet, and (2) in a public Internet environment cannot commit to particular confidentiality obligations.

The exchange of any confidential information made under a separate, signed confidentiality agreement, pursuant to 1.14.5b of this Agreement, does not apply to Content. IBM assumes no confidentiality obligations regarding Content, notwithstanding the terms of any separate confidentiality agreement between Customer and IBM.

51 Ownership

IBM and its suppliers own IBM SaaS. Customer agrees that title to, ownership of and all rights in and to patents, copyrights, trademarks, and all other intellectual property rights in IBM SaaS, and any copy or part of IBM SaaS will remain with IBM and its suppliers. IBM may subcontract IBM SaaS, or any part of it, including technical support, to subcontractors selected by IBM.

52 Customer's Right to Use

Customer may use an IBM SaaS offering in accordance with its Terms of Use, up to the specified level of use authorized in the Proof of Entitlement, on condition that:

- a. Customer accepts the Terms of Use of the IBM SaaS offering;
- b. Customer ensures that anyone who uses the IBM SaaS offering does so only on Customer's behalf and complies with the terms of this Agreement and the applicable Terms of Use; and
- c. Customer does not

(1) use, copy, modify, or make the IBM SaaS offering available, in whole or on part, to third parties except as expressly permitted in this Agreement and the applicable Terms of Use;

- (2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the IBM SaaS offering, unless expressly permitted by applicable law without the possibility of contractual waiver;
- (3) use any of the IBM SaaS offering's components, files, modules, audio-visual content, or related licensed materials separately from that of the IBM SaaS offering;
- (4) rent, sublicense, or lease the IBM SaaS offering;
- (5) create Internet "links" to or from the IBM SaaS offering; or
- (6) "frame" or "mirror" any content forming part of an IBM SaaS offering, other than on Customer's own intranets in connection with Customer's authorized use of the IBM SaaS offering.

5.3 Subscription to IBM SaaS

5.3.1 Terms for a Specific IBM SaaS Offering

The terms of a specific IBM SaaS offering are provided in its Terms of Use and may include without limitation definitions, description of subscription and services, charge metrics, and restrictions.

5.3.2 IBM SaaS Subscription Period

An IBM SaaS Subscription Period begins on the date that IBM notifies Customer that Customer has access to the subscribed offering. The end date of a Subscription Period as specified in a Transaction Document is the last day of a month.

During an IBM SaaS Subscription Period, Customer may increase Customer's subscribed level of an IBM SaaS offering.

Customer may not decrease Customer's subscribed level of an IBM SaaS offering during a Subscription Period but may decrease in a subsequent Subscription Period.

5.3.3 IBM SaaS Subscription Period Renewal

Customer may renew an IBM SaaS offering at the end of a Subscription Period, unless otherwise specified in the offering's Terms of Use. Some IBM SaaS offerings, as specified in the IBM SaaS offering's Terms of Use or Transaction Document, automatically renew at the end of the Subscription Period unless, prior to the end of the Subscription Period, IBM receives, either directly or through Customer's reseller, as applicable, Customer's written notification not to renew.

5.4 IBM SaaS Technical Support

During an IBM SaaS Subscription Period:

- a. IBM provides assistance, as specified in the ToU, for Customer's offering-specific, task-oriented questions regarding the use of IBM SaaS; and
- b. IBM SaaS technical support is available only for the currently supported versions of IBM SaaS, client operating systems, Internet browsers, and software. IBM technical support is available during the normal business hours (published prime shift hours) of the IBM SaaS support center. Consult the Terms of Use for details applicable to a specific IBM SaaS offering.

5.5 Content

IBM provides only services for Content. IBM is not the publisher of Content transmitted within IBM SaaS.

Customer has sole responsibility for the following:

- a. ensuring the adequacy of any IBM SaaS elements to satisfy any Customer requirements;
- b. all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support;
- c. having all necessary authorizations to allow IBM and its subcontractors to host, cache, record, copy, and display Content, and Customer represents that it has and will keep in effect during its use of IBM SaaS all such authorizations and approvals necessary to grant IBM and its subcontractors these rights, and that such rights are provided at no charge to IBM. Customer retains all right, title, and interest in and to its Content; and
- d. the selection and implementation of procedures and controls regarding access, security, encryption, use, transmission, and backup and recovery of Content.

Customer grants to IBM and its subcontractors a nonexclusive, irrevocable, worldwide, royalty-free, fully-paid, transferable license to host, cache, record, copy, and display Content, solely for the purpose of making IBM SaaS available.

5.6 Termination of IBM SaaS

IBM may withdraw the IBM SaaS in its entirety on 12 months' written notice to all then current Customers by letter or e-mail.

Notwithstanding anything to the contrary in this Agreement, if IBM terminates Customer's access to the IBM SaaS due to Customer's breach of any of the applicable terms of this Agreement, IBM is not obligated to issue a refund or credit for any unused portion of IBM SaaS.

6 Reserved

The balance of the page is left intentionally blank.

International Passport Advantage Agreement

Supplement for Purchase of IBM Appliances and Appliance Services

Name and Address of Customer: Alameda County Social Services
Agency
2000 San Pablo Avenue
OAKLAND CA 94612

***Ship to Address:** 2000 San Pablo Avenue
OAKLAND CA 94612
UNITED STATES

***Installation Address:** 2000 San Pablo Avenue
OAKLAND CA 94612
UNITED STATES

IBM Passport Advantage Agreement or Passport Advantage Express ("Agreement") /Site No: 155492/3053949

Customer No: 0924850

IBM Reference Number: 16556676

Invoice to: Alameda County Social Services
Agency
2000 San Pablo Avenue
OAKLAND CA 94612

If Ship To Address or Installation Address changes prior to shipment of the Appliance, Customer is responsible for notifying IBM (If applicable)

Definition of "Quote": If you are a customer of IBM, Quote means the quote IBM provided to you. If you are buying through a Business Partner, Quote means the quote the Business Partner provided to you.

Appliance Maintenance, Warranty and Warranty Service Upgrade table

Part#	Qty	Description	Warranty Type of Svc Cust set Svc Lvl Warranty Prod Type of Maint Svc Maint Svc			Type of Maint Svc Maint Svc		
			Period for During	up During Svc Lvl	Status Maint	Lvl After	Lvl	
			Machine Warranty (Y/N)	Warrant Upgrades	Code Svc	After Warranty	Upgrades	
			Component	y		Warranty		
D14UILL	1	IBM PureApplication System W2500-64 Appliance Install Appliance + Subscription and Support 12 Months	1	5	N	1	A	1

Production Status Codes:

1. New System
2. Used System
3. Unknown Status
- *5. POC System

Consult the IBM Passport Advantage Appliance Support Handbook ("Appliance Support Handbook") for further details on Production Status

Codes at

<http://www.ibm.com/software/appliance/support>

Types of Service (during warranty), if available

1. Customer Replaceable Unit (CRU) Service
5. CRU and On-site Service
6. CRU and Courier or Depot Service
7. CRU and Customer Carry-In or Mail-In Service
8. CRU and Machine Exchange Service

Service Levels, if available

1. Next Business Day (NBD), 9X5
2. Same Business Day (SBD), 9X5
3. Same Day (SD), 24X7
4. 24X7 NBD (delivery)

Types of Maintenance Service (after warranty), if available

- A. On-Site Repair/Exchange Services, Monday through Friday (excluding holidays), 9am to 5pm, next business
- D. On-Site Repair/Exchange Services, 7 days a week, 24 hrs/day, 4 hour response objective.
- This type of repair service includes a response objective and is not a guarantee.

International Program License Agreement

Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, CLICKING ON AN "ACCEPT" BUTTON, OR OTHERWISE USING THE PROGRAM, LICENSEE AGREES TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF LICENSEE, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND LICENSEE TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, CLICK ON AN "ACCEPT" BUTTON, OR USE THE PROGRAM; AND
- PROMPTLY RETURN THE UNUSED MEDIA, DOCUMENTATION, AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM IT WAS OBTAINED FOR A REFUND OF THE AMOUNT PAID. IF THE PROGRAM WAS DOWNLOADED, DESTROY ALL COPIES OF THE PROGRAM.

1. Definitions

"Authorized Use" – the specified level at which Licensee is authorized to execute or run the Program. That level may be measured by number of users, millions of service units ("MSUs"), Processor Value Units ("PVUs"), or other level of use specified by IBM.

"IBM" – International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") – a document that provides information and any additional terms specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI can also be found in the Program's directory, by the use of a system command, or as a booklet included with the Program.

"Program" – the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, files, and modules, 3) audio-visual content (such as images, text, recordings, or pictures), and 4) related licensed materials (such as keys and documentation).

"Proof of Entitlement" ("PoE") – evidence of Licensee's Authorized Use. The PoE is also evidence of Licensee's eligibility for warranty, future update prices, if any, and potential special or promotional opportunities. If IBM does not provide Licensee with a PoE, then IBM may accept as the PoE the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom Licensee obtained the Program, provided that it specifies the Program name and Authorized Use obtained.

"Warranty Period" – one year, starting on the date the original Licensee is granted the license.

2. Agreement Structure

This Agreement includes **Part 1 - General Terms**, the LI, and the PoE and is the complete agreement between Licensee and IBM regarding the use of the Program. It replaces any prior oral or written communications between Licensee and IBM concerning Licensee's use of the Program. The terms of Part 2 may replace or modify those of Part 1. To the extent of any conflict, the LI prevails over both Parts.

3. License Grant

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants Licensee a nonexclusive license to 1) use the Program up to the Authorized Use specified in the PoE, 2) make and install copies to support such Authorized Use, and 3) make a backup copy, all provided that

- Licensee has lawfully obtained the Program and complies with the terms of this Agreement;
- the backup copy does not execute unless the backed-up Program cannot execute;
- Licensee reproduces all copyright notices and other legends of ownership on each copy, or partial copy, of the Program;
- Licensee ensures that anyone who uses the Program (accessed either locally or remotely) 1) does so only on Licensee's behalf and 2) complies with the terms of this Agreement;
- Licensee does not 1) use, copy, modify, or distribute the Program except as expressly permitted in this Agreement; 2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the

Program, except as expressly permitted by law without the possibility of contractual waiver; 3) use any of the Program's components, files, modules, audio-visual content, or related licensed materials separately from that Program; or 4) sublicense, rent, or lease the Program; and

- f. if Licensee obtains this Program as a Supporting Program, Licensee uses this Program only to support the Principal Program and subject to any limitations in the license to the Principal Program, or, if Licensee obtains this Program as a Principal Program, Licensee uses all Supporting Programs only to support this Program, and subject to any limitations in this Agreement. For purposes of this Item "f," a "Supporting Program" is a Program that is part of another IBM Program ("Principal Program") and identified as a Supporting Program in the Principal Program's LI. (To obtain a separate license to a Supporting Program without these restrictions, Licensee should contact the party from whom Licensee obtained the Supporting Program.)

This license applies to each copy of the Program that Licensee makes.

31 Trade-ups, Updates, Fixes, and Patches

3.1.1 Trade-ups

If the Program is replaced by a trade-up Program, the replaced Program's license is promptly terminated.

3.1.2 Updates, Fixes, and Patches

When Licensee receives an update, fix, or patch to a Program, Licensee accepts any additional or different terms that are applicable to such update, fix, or patch that are specified in its LI. If no additional or different terms are provided, then the update, fix, or patch is subject solely to this Agreement. If the Program is replaced by an update, Licensee agrees to promptly discontinue use of the replaced Program.

3.2 Fixed Term Licenses

If IBM licenses the Program for a fixed term, Licensee's license is terminated at the end of the fixed term, unless Licensee and IBM agree to renew it.

3.3 Term and Termination

This Agreement is effective until terminated.

IBM may terminate Licensee's license if Licensee fails to comply with the terms of this Agreement.

If the license is terminated for any reason by either party, Licensee agrees to promptly discontinue use of and destroy all of Licensee's copies of the Program. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

4. Charges

Charges are based on Authorized Use obtained, which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If Licensee wishes to increase its Authorized Use, Licensee must notify IBM or an authorized IBM reseller in advance and pay any applicable charges.

5. Taxes

If any authority imposes on the Program a duty, tax, levy, or fee, excluding those based on IBM's net income, then Licensee agrees to pay that amount, as specified in an invoice, or supply exemption documentation. Licensee is responsible for any personal property taxes for the Program from the date that Licensee obtains it. If any authority imposes a customs duty, tax, levy, or fee for the import into or the export, transfer, access, or use of the Program outside the country in which the original Licensee was granted the license, then Licensee agrees that it is responsible for, and will pay, any amount imposed.

6. Money-back Guarantee

If Licensee is dissatisfied with the Program for any reason and is the original Licensee, Licensee may terminate the license and obtain a refund of the amount Licensee paid for the Program, provided that Licensee returns the Program and PoE to the party from whom Licensee obtained it within 30 days of the date the PoE was issued to Licensee. If the license is for a fixed term that is subject to renewal, then Licensee may obtain a refund only if the Program and its PoE are returned within the first 30 days of the initial term. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

7. Program Transfer

Licensee may transfer the Program and all of Licensee's license rights and obligations to another party only if that party agrees to the terms of this Agreement. If the license is terminated for any reason by either party, Licensee is prohibited from transferring the Program to another party. Licensee may not transfer a portion of 1) the Program or 2) the Program's Authorized Use. When Licensee transfers the Program, Licensee must also transfer a hard copy of this Agreement, including the LI and PoE. Immediately after the transfer, Licensee's license terminates.

8. Warranty and Exclusions

8.1 Limited Warranty

IBM warrants that the Program, when used in its specified operating environment, will conform to its specifications. The Program's specifications, and specified operating environment information, can be found in documentation accompanying the Program (such as a read-me file) or other information published by IBM (such as an announcement letter). Licensee agrees that such documentation and other Program content may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation.

The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program, or that IBM will correct all Program defects. Licensee is responsible for the results obtained from the use of the Program.

During the Warranty Period, IBM provides Licensee with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge.

Consult the IBM Software Support Handbook for further information at <http://www.ibm.com/software/support>.

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, Licensee may return the Program and its PoE to the party (either IBM or its reseller) from whom Licensee obtained it and receive a refund of the amount Licensee paid. After returning the Program, Licensee's license terminates. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

8.2 Exclusions

THESE WARRANTIES ARE LICENSEE'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE.

THESE WARRANTIES GIVE LICENSEE SPECIFIC LEGAL RIGHTS. LICENSEE MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

THE WARRANTIES IN THIS SECTION 8 (WARRANTY AND EXCLUSIONS) ARE PROVIDED SOLELY BY IBM. THE DISCLAIMERS IN THIS SUBSECTION 8.2 (EXCLUSIONS), HOWEVER, ALSO APPLY TO IBM'S SUPPLIERS OF THIRD PARTY CODE. THOSE SUPPLIERS PROVIDE SUCH CODE WITHOUT WARRANTIES OR CONDITION OF ANY KIND. THIS PARAGRAPH DOES NOT NULLIFY IBM'S WARRANTY OBLIGATIONS UNDER THIS AGREEMENT.

9. Licensee Data and Databases

To assist Licensee in isolating the cause of a problem with the Program, IBM may request that Licensee 1) allow IBM to remotely access Licensee's system or 2) send Licensee information or system data to IBM. However, IBM is not obligated to provide such assistance unless IBM and Licensee enter a separate written agreement under which IBM agrees to provide to Licensee that type of technical support, which is beyond IBM's warranty obligations in this Agreement. In any event, IBM uses information about errors and problems to improve its products and services, and assist with its provision of related support

offerings. For these purposes, IBM may use IBM entities and subcontractors (including in one or more countries other than the one in which Licensee is located), and Licensee authorizes IBM to do so.

Licensee remains responsible for 1) any data and the content of any database Licensee makes available to IBM, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Licensee will not send or provide IBM access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that IBM may incur relating to any such information mistakenly provided to IBM or the loss or disclosure of such information by IBM, including those arising out of any third party claims.

10. Limitation of Liability

The limitations and exclusions in this Section 10 (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

10.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Licensee is entitled to recover damages from IBM. Regardless of the basis on which Licensee is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Program or otherwise arising under this Agreement will not exceed the amount of any 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) other actual direct damages up to the charges (if the Program is subject to fixed term charges, up to twelve months' charges) Licensee paid for the Program that is the subject of the claim.

This limit also applies to any of IBM's Program developers and suppliers. It is the maximum for which IBM and its Program developers and suppliers are collectively responsible.

10.2 Items for Which IBM Is Not Liable

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

- a. **LOSS OF, OR DAMAGE TO, DATA;**
- b. **SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**
- c. **LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

11. Compliance Verification

For purposes of this Section 11 (Compliance Verification), "IPLA Program Terms" means 1) this Agreement and applicable amendments and transaction documents provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (www.ibm.com/software/policies/), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this Section 11 remain in effect during the period the Program is licensed to Licensee, and for two years thereafter.

11.1 Verification Process

Licensee agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Licensee's use of all Programs is in compliance with the IPLA Program Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Licensee is responsible for 1) ensuring that it does not exceed its Authorized Use, and 2) remaining in compliance with IPLA Program Terms.

Upon reasonable notice, IBM may verify Licensee's compliance with IPLA Program Terms at all sites and for all environments in which Licensee uses (for any purpose) Programs subject to IPLA Program Terms. Such verification will be conducted in a manner that minimizes disruption to Licensee's business, and may be conducted on Licensee's premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

11.2 Resolution

IBM will notify Licensee in writing if any such verification indicates that Licensee has used any Program in excess of its Authorized Use or is otherwise not in compliance with the IPLA Program Terms. Licensee agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

12. Third Party Notices

The Program may include third party code that IBM, not the third party, licenses to Licensee under this Agreement. Notices, if any, for the third party code ("Third Party Notices") are included for Licensee's information only. These notices can be found in the Program's NOTICES file(s). Information on how to obtain source code for certain third party code can be found in the Third Party Notices. If in the Third Party Notices IBM identifies third party code as "Modifiable Third Party Code," IBM authorizes Licensee to 1) modify the Modifiable Third Party Code and 2) reverse engineer the Program modules that directly interface with the Modifiable Third Party Code provided that it is only for the purpose of debugging Licensee's modifications to such third party code. IBM's service and support obligations, if any, apply only to the unmodified Program.

13. General

- a. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- b. For Programs IBM provides to Licensee in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Licensee and IBM.
- c. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
- d. Licensee agrees to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.
- e. Licensee authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Licensee's business contact information wherever they do business, in connection with IBM products and services, or in furtherance of IBM's business relationship with Licensee.
- f. Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement.
- g. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: 1) neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and 2) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.
- h. Neither Licensee nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
- i. No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for any third party claims against Licensee, except as permitted in Subsection 10.1 (Items for Which IBM May Be Liable) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- j. In entering into this Agreement, neither party is relying on any representation not specified in this Agreement, including but not limited to any representation concerning: 1) the performance or function of the Program, other than as expressly warranted in Section 8 (Warranty and Exclusions) above; 2) the experiences or recommendations of other parties; or 3) any results or savings that Licensee may achieve.
- k. IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Programs. IBM Business Partners remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or obligations they have to Licensee.

- l The license and intellectual property indemnification terms of Licensee's other agreements with IBM (such as the IBM Customer Agreement) do not apply to Program licenses granted under this Agreement.

14. Geographic Scope and Governing Law

14.1 Governing Law

Both parties agree to the application of the laws of the country in which Licensee obtained the Program license to govern, interpret, and enforce all of Licensee's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

14.2 Jurisdiction

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license.

International Passport Advantage Agreement

Attachment for Appliance Services

Part 1 – General Terms

The terms of this Attachment for Appliance Services ("Attachment") are in addition to those of Customer's IBM International Passport Advantage Agreement or IBM International Passport Advantage Express Agreement, as applicable, and govern the warranty and maintenance services for IBM Appliances obtained from IBM or an authorized reseller. Customer accepts the terms of this Attachment without modification by signing below. Capitalized terms not defined in this Attachment are defined in the Agreement.

1. Definitions

Customer Replaceable Unit or "CRU" – a Machine Component part that is designated as a Customer Replaceable Unit (e.g. keyboard, memory, or hard disk drive).

Miscellaneous Equipment Specification ("MES") – a change to an installed Machine Component as specified in a Transaction Document, typically (but not limited to) enhancing some or all of the resources installed as part of that Machine Component's configuration. For instance, an MES can add processing capacity or memory or both to a server, storage capacity to a disk storage device, input/output adapters to any Machine Component, and so forth. An MES can add or remove Machine Component features, or convert a Machine Component's features, model, or Machine Component type, but only to an extent specified in an announcement letter by IBM for the particular Machine Component.

Service – performance of a task, assistance, support, or access to resources (such as an information database) that IBM makes available to Customer as specified in a Transaction Document. Service acquired under this Attachment is an Eligible Product.

Specified Location – a location within Customer's Enterprise at which Services are provided as specified in a Transaction Document. All Services received in Specified Locations are subject to the terms of this Attachment.

Standard Business Days – the generally accepted days of operation per week in each country or locality, excluding local public holidays and national holidays.

Standard Business Hours – the normal business hours of a Standard Business Day.

Service Period – the period specified in a Transaction Document during which IBM provides Service under this Attachment in a specific country.

2. Attachment Structure

This Attachment includes **Part 1 - General Terms** and **Part 2 - Country-unique Terms** (if any). The terms of Part 2 may replace or modify those of Part 1.

3. Scope of Services

Service for IBM Appliances, during and after warranty, is a single offering composed of specific Services for Program Components, Machine Components, and, if available, the Machine Code Component of an IBM Appliance.

A Transaction Document, if required, will be created for each Specified Location obtaining Services under this Attachment.

If there is a conflict among the terms of a Transaction Document, this Attachment, and the Agreement, those of a Transaction Document prevail over this Attachment and those of this Attachment prevail over the Agreement.

IBM will specify the Appliance, the Services that apply to it, the Service Period, additional terms and conditions, if applicable, and the Specified Location in the Transaction Document.

Consult the IBM Passport Advantage Appliance Support Handbook ("Appliance Support Handbook") for further details on Appliance Service at: <http://www.ibm.com/software/appliance/support>.

4. IBM Responsibilities

When Customer contracts for an applicable Service at a Specified Location, IBM agrees to deliver such Service in accordance with the terms and responsibilities identified in the Service description set out in this Attachment or the applicable Transaction Document.

5 Customer Responsibilities

Customer agrees:

- a. that when an applicable Service includes IBM providing Customer with any access codes, access to electronic diagnostic tools, information databases, or other Service delivery facilities, Customer shall limit the use of these items to only those who are authorized to use them under Customer's control and only in support of Appliances and Services identified in Transaction Documents;
- b. to provide access to Customer's Appliance via modem or the Internet for remote problem diagnostics and correction. Customer is responsible for supplying the modem and telephone lines required at Customer's facility and for providing IBM temporary user access to Customer's Appliance. Customer shall ensure that these remote activities are performed under Customer's control. Customer is responsible for i) any data and the content of any database Customer makes available to IBM in connection with a Service under this Attachment, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data. Failure to provide remote access to Customer's Appliance may delay problem resolution time;
- c. to pay any communications charges associated with accessing these Services including, but not limited to, phone and Internet connection charges, unless IBM specifies otherwise in writing;
- d. that prior to making Customer's facilities, software, hardware, networks or other similar resources available to IBM, to promptly obtain any licenses or approvals necessary for IBM or its subcontractors to use, access and modify such resources to the extent necessary for IBM to perform the Services. IBM will be relieved of its obligations to perform the Services to the extent Customer's failure to promptly obtain such licenses or approvals adversely affect IBM's ability to perform its obligations. If a third party asserts a claim against IBM as a result of Customer's failure to promptly obtain these licenses or approvals, Customer agrees to reimburse IBM for any costs and damages that IBM may reasonably incur in connection with such claim;
- e. that certain Machine Component types may require the installation and use of remote connectivity tools and equipment for direct problem reporting, remote problem determination and resolution;
- f. to follow the Service instructions that IBM provides or that may be specified in the Appliance Support Handbook at: <http://www.ibm.com/software/appliance/support>. (These instructions may include directions for installing a Machine Code Component and other Program updates either downloaded from an IBM Internet Web site or copied from other electronic media in order to maintain the currency of the Appliance); and
- g. to use the information obtained under these Services, including electronic diagnostic and service delivery facilities, only for the support of the information processing requirements within Customer's Enterprise.

In addition, Customer acknowledges that IBM is permitted to use global resources (non-permanent residents used locally and personnel in locations worldwide) for the delivery of the Service.

6 Personnel

Each party shall assign personnel that are qualified to perform the tasks required of such party under this Attachment and each party is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.

IBM may engage subcontractors to provide or assist in providing Services, in which case IBM remains responsible for the fulfillment of its obligations under this Attachment and for the performance of the Services.

7. Service for IBM Appliances (during and after warranty)

7.1 Hours of Coverage

The hours of coverage for each Appliance, during which IBM will provide Services for such Appliance, are specified in the Appliance Support Handbook at: <http://www.ibm.com/software/appliance/support>

Unless otherwise specified, IBM provides the Services in each country/locality on Standard Business Days during Standard Business Hours. Additional hours of coverage options are available for some Services.

7.2 Service for IBM Machine Components (during and after warranty)

IBM provides certain types of Service to keep Machine Components in, or restore them to, conformance with their Specifications. IBM will inform Customer of the available types of Service for a Machine Component. At its discretion, IBM will i) either repair or exchange the failing Machine Component and ii) provide the Service either at Customer's location or a service center. IBM manages and installs selected Engineering Changes that apply to IBM Machine Components and may also perform preventive maintenance.

Any Upgrade IBM services must be installed on a Machine Component that is i) the designated, serial-numbered Machine Component, if applicable, and ii) at an Engineering Change level compatible with the Upgrade.

When the type of Service requires that Customer deliver the failing Machine Component to IBM, Customer agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine Component, IBM will deliver it to Customer at IBM's expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, the Machine Component while it is i) in IBM's possession or ii) in transit in those cases where IBM is responsible for the transportation charges.

Customer agrees:

- a. to obtain authorization from the owner to have IBM service a Machine Component that Customer does not own;
- b. where applicable, before IBM provides Service, to --
 - (1) follow the problem determination and service request procedures that IBM provides;
 - (2) secure all programs data, and funds contained in a Machine Component; and
 - (3) inform IBM of changes in a Machine Component's location; and
- c. when Customer returns a Machine Component to IBM for any reason --
 - (1) to securely erase from any Machine Component all data, including without limitation, the following: i) Personal Data and ii) confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
 - (2) to remove all funds from Machine Components returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine Component, or data contained in a Machine Component that Customer returns to IBM; and
 - (3) IBM may ship all or part of the Appliance to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

7.2.1 Replacements

When Service involves the exchange of a part or Machine Component, the item that IBM replaces becomes its property and the replacement becomes Customer's. Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a part or Machine Component, Customer agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. Customer also agrees to i) ensure that the part or Machine Component is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to IBM.

Service for some IBM Machine Components involves IBM providing an exchange replacement for installation by Customer. Such exchange replacements may be i) a CRU or ii) an entire Machine Component. Customer may request IBM to install the replacement CRU or Machine Component, however, Customer may be charged for the installation. IBM provides information and replacement instructions with Customer's Machine Component and at any time on Customer's request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine Component must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement, and Customer may be charged for the replacement if IBM does not receive the failing CRU or Machine Component within 15 days of Customer's receipt of the replacement.

7.2.2 Items Not Covered

Repair and exchange Services do not cover:

- a. accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);
- b. Machine Components damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or a third party;
- c. Machine Components with removed or altered Machine Component or parts identification labels;
- d. failures caused by a product for which IBM is not responsible;
- e. service of Machine Component alterations; or
- f. service of a Machine Component on which Customer is using capacity or capability, other than that authorized by IBM in writing.

7.2.3 Warranty Service Upgrade

For certain Machine Components, Customer may select a Service upgrade from the standard level of warranty Service for the Machine Component, which is specified in a Transaction Document ("Warranty Service Upgrade"), during the warranty period. IBM provides Service for Appliances as described in this Attachment but charges for the Warranty Service Upgrade. Customer may not terminate the Warranty Service Upgrade or transfer it to another Appliance during the warranty period.

When the warranty period ends, the Machine Component will convert to maintenance Service at the same level of Service, if available, that Customer selected for the Warranty Service Upgrade.

Consult the IBM Appliance Support Handbook for further details on Appliance Warranty Service Upgrade options at: <http://www.ibm.com/software/appliance/support>.

7.3 Service for Program Components (during and after warranty)

IBM provides Service for the Program Component of IBM Appliances during the warranty period as stated in the Program Component's license agreement. IBM provides additional support, both during and after warranty, for Program Components as part of and as described in the Software Subscription and Support and Selected Support section of the Agreement.

Software Subscription and Support for the Program Component of an Appliance during the warranty period begins on the Date of Installation.

7.4 Service Options (during and after warranty)

For certain IBM Appliances, Customer may select additional Service options that are specified in a Transaction Document ("Service Options"). IBM provides these additional Service Options in accordance with the Service descriptions contained in a Transaction Document. IBM provides Service for Appliances as described in this Attachment, but charges for Service Options.

Customer may not terminate the Service Option or transfer the Service Option to another Appliance during the Service Period.

Consult the IBM Appliance Support Handbook for further details on Appliance Service Options at: <http://www.ibm.com/software/appliance/support>.

8 Maintenance Service for IBM Machine Components (after warranty)

When the warranty period ends, the warranty Service for the IBM Machine Component will convert to Appliance Maintenance and Subscription and Support Service in accordance with the terms of Section 3.5.4 of the Agreement: Automatic Annual Renewal of Software Subscription and Support and Selected

Support, including any applicable Country-unique terms, except that for purposes of this Attachment, the words "and maintenance Service" are added after the words "software subscription and support".

As part of Appliance Maintenance and Subscription & Support Service, IBM provides Service for IBM Machine Components, as described in this Attachment, for those Appliances specified in a Transaction Document. This Service for IBM Machine Components also consists of:

- a. remotely assisting Customer in determining whether system problems are IBM Machine Component or Program Component related (problem determination);
- b. onsite and remote diagnostic and remedial maintenance Service in accordance with the type of Service for the IBM Machine Components of Appliances specified in a Transaction Document in order to keep the IBM Machine Components in, or restore them to, conformance with their Specifications, when applicable;
- c. if available for the IBM Machine Components of Appliances specified in a Transaction Document, installation of monitoring Programs to endeavor to:
 - (1) detect and analyze permanent errors;
 - (2) correlate temporary errors; and
 - (3) identify and report media problems.

IBM retains ownership of all such monitoring Programs. Customer is licensed to run such monitoring Programs solely as required by IBM to enable IBM to provide the Services herein;

- d. the Services of support specialists from IBM manufacturing, engineering, and development locations as deemed necessary by IBM;
- e. the planning, scheduling and installation of any standard available Engineering Changes or field change orders required to improve the serviceability, performance or safety of the IBM Eligible Machines;
- f. assisting Customer in establishing and implementing electronic support facilities; and
- g. activation, for use by IBM personnel only, of electronic facilities to remotely diagnose, apply fixes and update the IBM Machine Components of Appliances specified in a Transaction Document.

9. Warranty for Service

In addition to the warranties provided in the Agreement, IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description.

10. Appliance Maintenance and Subscription & Support Service Period and Renewal

The initial Service Period for IBM Machine Components is the warranty period specified in a Transaction Document for the IBM Machine Component of the Appliance. Warranty Services are not renewable. When Customer obtains Appliance Maintenance and Subscription and Support Service for an Appliance, the initial Service Period for the Appliance Maintenance and Subscription and Support Service will be treated as if it is a renewal of a previous Service Period for i) the IBM Machine Component of the Appliance and ii) the Software Subscription and Support for the Program Component of an Appliance.

Appliance Maintenance and Subscription and Support Service are provided at the same level of Service, if available, that Customer was entitled to during the warranty period or the same level of Service that Customer selected for a Warranty Service Upgrade. The initial Service Period for Appliance Maintenance and Subscription and Support Service begins on the day after the warranty period for the IBM Machine Component ends. The initial Service Period for Appliance Maintenance and Subscription and Support Service ends on i) the last day of the corresponding month in the following year, unless the warranty period ends on the last day of the month, in which case the Service Period ends on the last day of the month, 12 months from the date on which the warranty period ends for the Machine Component or ii) the Customer's Anniversary date, if applicable, for a Service Period of less than 12 full months for a prorated charge, thereby aligning the Service Period for Appliance Maintenance and Subscription and Support Service with the Anniversary.

Once Customer orders Appliance Maintenance and Subscription and Support Service for an Appliance, Customer may then renew Customer's expiring Appliance Maintenance and Subscription and Support Service in accordance with the terms of Section 3.5.4 of the Agreement: Automatic Annual Renewal of Software Subscription and Support and Selected Support, including any applicable Country-unique terms,

except that for purposes of Services provided pursuant to this Attachment, the words "and maintenance Service" are added after the words "software subscription and support".

11. Reinstatement of Service

To reinstate any expired Appliance Maintenance and Subscription and Support Service, Customer must acquire IBM Appliance Maintenance Reinstatement that includes IBM Software Subscription and Support Reinstatement. IBM may inspect the Appliance at Customer's expense before reinstating Appliance Maintenance and Subscription and Support Service. If the Appliance is not in an acceptable condition for maintenance Service, Customer may have IBM restore it for a charge or Customer may withdraw its request for Appliance Maintenance Reinstatement. IBM, at its sole discretion, determines if restoration is possible. Restoration is provided as a billable Service.

12. Termination and Withdrawal of a Service

If IBM withdraws Appliance Maintenance and Subscription and Support Service for a particular Appliance, Customer understands that:

- a. IBM will not make the Appliance Maintenance and Subscription and Support Service renewal available for that Appliance; and
- b. if Customer renewed Appliance Maintenance and Subscription and Support Service for the Appliance prior to the notice of withdrawal, IBM may either continue to provide Appliance Maintenance and Subscription and Support Service to Customer for that Appliance until the end of the then current Service Period or Customer may obtain a prorated refund.

Any terms that by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

Part 2 - Country-unique Terms

For transactions performed in the countries specified below, the following terms replace or modify the referenced terms in Part 1. All terms in Part 1 that are not changed by these amendments remain unchanged and in effect. This Part 2 is organized as follows:

- Europe, Middle East, and Africa country amendments to other Attachment terms.

EUROPE, MIDDLE EAST, AFRICA COUNTRY AMENDMENTS

AUSTRIA

7.2 Service for IBM Machine Components (during and after warranty)

The following is added as the second sentence in the fourth paragraph:

During the warranty period, IBM will reimburse you for the transportation charges for delivery of the failing Machine Component to IBM and will return it to you at IBM's expense.

GERMANY

7.2 Service for IBM Machine Components (during and after warranty)

The following is added as the second sentence in the fourth paragraph:

During the warranty period, IBM will reimburse you for the transportation charges for delivery of the failing Machine Component to IBM.

This Attachment for Appliance Services, the Agreement, and any of its Transaction Documents, is complete agreement between the parties regarding transactions by which Customer obtains warranty and maintenance Services for IBM Appliances and replaces all prior oral or written communications, representations, undertakings, warranties, promises, covenants, and commitments between Customer and IBM regarding Appliance Services. In entering into this Attachment, including any applicable Transaction Document, neither party is relying on any representation not specified in this Attachment, the Agreement, or a Transaction Document. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party accepts the terms of this Attachment by signing this Attachment (or another document that incorporates it by reference) by hand or, where recognized by law, electronically. Once signed, i) any reproduction of this Attachment made by reliable means (for example, electronic image, photocopy, or facsimile) is considered an original and ii) all Appliance warranty and maintenance Services obtained under this Attachment are subject to it.

Agreed to:
County of Alameda, Social Services Agency

By Don R Edwards
Customer Authorized signature

Agreed to:
International Business Machines Corporation

By Devin F. Brown
Authorized signature

Name (type or print): DON R. EDWARDS

Position (type or print): DPE

Date: 9-5-14

Agreement number / Site number: 155492-3053949

Your IBM Customer number: 0924850

Name (type or print): Devin F. Brown

Position (type or print):

Date: 9/5/14

Your address:
2000 San Pablo Avenue, 4th Floor, Oakland, CA
94612

2710 Gateway Oaks Drive,
South Building, Suite 200
Sacramento, CA 95833

Exhibit K

IBM International Passport Advantage Agreement Attachment for Government Option

These terms modify or are in addition to those of the IBM International Passport Advantage Agreement ("the Agreement").

You accept the terms of this Attachment without modification by indicating you are enrolling under the Government Option when you submit an IBM International Passport Advantage Enrollment Form to IBM or your reseller, as applicable.

To participate in the Government Option under the Agreement, you must be an agency or affiliated entity of either the U.S. Federal government or a state or local government. Under this Government Option Attachment to the Agreement, you receive special pricing due to your status as government and therefore other pricing and discounting mechanisms and procedures do not apply.

Section 5 - Relationship SVP Level of the Agreement does not apply under this Attachment.

EXHIBIT O

COUNTY OF ALAMEDA
THE IRAN CONTRACTING ACT (ICA) OF 2010
 For Procurements of \$1,000,000 or more

The California Legislature adopted the Iran Contracting Act (ICA) to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The ICA prohibits persons engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A person who "engages in investment activities in Iran" is defined in either of two ways:

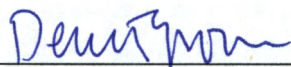
1. The person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. The person is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2201(b) as a person engaging in the investment activities described in paragraph 1 above.

By signing below, I hereby certify that as of the time of bidding or proposing for a new contract or renewal of an existing contract, neither I nor the company I own or work for are identified on the DGS list of ineligible persons and neither I nor the company I own or work for are engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

If either I or the company I own or work for are ineligible to bid or submit a proposal or to renew a contract, but I believe I or it qualifies for an exception listed in PCC § 2202(c), I have described in detail the nature of the exception: _____

CONTRACTOR NAME: International Business Machines (IBM) Corporation

PRINCIPAL: Devin F. Brown TITLE: Client Executive, CA Public Sector

SIGNATURE:  DATE: 9/5/14

C013
Add'l Copy

REQUEST TO ENCUMBER, ADD, LIQUIDATE FUNDS OR PAY CONTRACTOR

PART I: REQUEST FROM CONTRACTING DEPARTMENT

Contractor's Name: International Business Machines (IBM) Corp.

If Pay Contract-Remittance Address: _____

Contractor's Vendor ID: 13283 Master Contract #: n/a Procurement Contract #: 10789

Description of Contract: PureApplication System SSIRS data warehouse upgrade

Procurement Contract Begin Date: 9/23/2014 Expire Date: 9/22/2017

Elation Project Info: ☐ Sub-Contractor Compliance ☐ Labor Compliance

Board Waiver #: _____ GSA Waiver #: 3183 Federal Fund Waiver #: _____

A. ENCUMBER FUNDS IN A NEW PURCHASE ORDER

Date of Board Minute Order: 9/23/2014

File/Item/Contract Number: _____

Total Amount Authorized By Board: \$1,246,783.20

Amount to be Encumbered: \$1,246,783.20

Justification if partial encumbrance requested: _____

B. ADD FUNDS TO AN EXISTING PURCHASE ORDER

PO Number: _____

Date of Board Minute Order: _____

File/Item/Contract Number: _____

Total Amount Authorized By Board: _____

Amount to be Encumbered: _____

Justification if partial encumbrance requested: _____

C. LIQUIDATE FUNDS FROM A PURCHASE ORDER

Purchase Order Number: _____

Amount to be Liquidated: _____

Liquidation Justification: _____

D. PAY CONTRACTOR - ATTACH INVOICE

PO#: _____

PO Type: _____

Business Unit: _____

Voucher #: _____

Invoice #: _____

Amount Due \$: _____

Service Period: _____

Payment Handling: ☐ US Mail☐ Return to Department☐ CBAP Payment

Pay Comments: _____

Dept Claims Processor: _____

Dept. Claims Approver: _____

Authorized signatory below certifies that contractor has provided goods/services as invoiced and verifies the mathematical accuracy of the invoice; that all financial provisions of the contract have been met (including the rates charged); that all invoiced items are specifically authorized by the contract and no contract limits have been exceeded (in total, by month or by expense category).

ACCOUNTING INFORMATION

Business Unit	Account	Fund	Dept	Program	BY	Subclass	Proj/Grant	Amount
SOCSA	610292	10000	320100	30400	2015			\$1,246,783.20
Total								\$1,246,783.20

Send Response to: Muang Saechao/Agnes Leung QIC: 20203 Phone: 267-9447

Authorized Signature: _____ Department: SSA Contracts

Date: 9-9-14

Print Name of Authorized Signatory: Kathy Chen

PART II: RESPONSE FROM AUDITOR-CONTROLLER

☐ The Auditor-Controller encumbered _____ in a new PO. The PO Number is _____☐ The Auditor-Controller added _____ to PO Number _____☐ The Auditor-Controller liquidated _____ from PO Number _____☐ Contractor payment Approved ☐ Contractor payment Denied-Reason: _____☐ This form is being returned to you due to insufficient funds in the appropriation account.☐ The following information is needed before this request can be processed.

Signature of Contract Processor/Claims Approver _____

Date: _____

QUESTIONNAIRE FOR DETERMINING THE WITHHOLDING STATUS

INSTRUCTIONS: This questionnaire is to be completed by the County department for services contracts and must be included as part of the contract package. Be sure to answer all of the questions in Sections I and II and to complete the certifications on page 2. Sections III and IV contain supplemental questions to be answered for contractors in certain service categories.

CONTRACTOR NAME: International Business Machines (IBM) Corp DEPT #: SOCSA

TITLE/SERVICE: PureApplication Server SSIRS data warehouse upgrade

DEPT. CONTACT: Muang Saechao PHONE: 510-267-9447

I. INFORMATION ABOUT THE CONTRACTOR **YES NO**

1. Is the contractor a corporation or partnership? (X) ()
2. Does the contractor have the right per the contract to hire others to do the work agreed to in the contract? (X) ()
3. If the answer to BOTH questions is YES, provide the employer ID number here: 13-0871985
No other questions need to be answered. Withholding is not required.
4. If the answer to question 1 is NO and 2 is YES, provide the individual social security number here: _____
No other questions need to be answered. Withholding is not required.
5. If the answer to question 2 is NO, continue to Section II.

II. RELATIONSHIP OF THE PARTIES **YES NO**

1. Does the County have the right to control the way in which the work will be done, i.e., will the County be able to specify the sequence of steps or the processes to be followed if it chooses to do so? () ()
2. Is the contractor restricted from performing similar services for other businesses while he is working for the County? () ()
3. Will the contractor be working for more than 50% of the time for the County (50% = 20 hrs/wk; 80 hrs/mo)? () ()
4. Is the relationship between the County and the contractor intended to be ongoing? () ()

III. FOR CONSULTANTS, PROJECT MANAGERS, PROJECT COORDINATORS **YES NO**

1. Is the contractor being hired for a period of time rather than for a specific project? () ()
2. Will payment be based on a wage or salary (as opposed to a commission or lump sum)? () ()

IV. FOR PHYSICIANS, PSYCHIATRISTS, DENTISTS, PSYCHOLOGISTS **YES NO**

1. Will the agreement be with an individual who does not have an outside practice? () ()
2. Will the contractor work more than an average of ten hours per week?
IF THE ANSWER TO QUESTION 2 IS YES, ANSWER QUESTION 3. () ()
3. Will the County provide more than 20% of the contractor's income? () ()
4. If the answer to either question 2, or if required, question 3 is NO, the entire answer is NO.

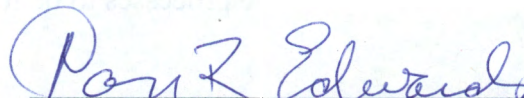
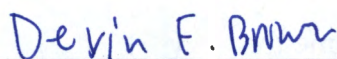
A "YES" answer to any of the questions in Section II, or, if applicable, Sections III or IV constitutes justification for paying the contractor through the payroll system as an "employee for withholding purposes."

CERTIFICATIONS:

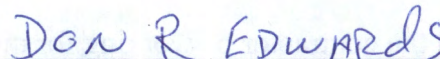
I hereby certify that the answers to the above questions accurately reflect the anticipated working relationship for this contract.



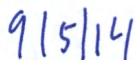
Contractor Signature

Agency/Department Head/Designee
Signature

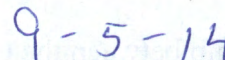
Printed Name



Printed Name



Date



Date

A/C 10/7/14
#2
F29356

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of 9/23/2014, is by and between the County of Alameda, hereinafter referred to as the "County", and International Business Machines (IBM) Corporation, hereinafter referred to as the "Contractor".

WITNESSETH

Whereas, County desires to obtain PureApplication Server SSIRS data warehouse upgrade goods and services which are more fully described in Exhibit A hereto; and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to County; and

Now, therefore it is agreed that County does hereby retain Contractor to provide PureApplication Server SSIRS data warehouse upgrade goods and services, and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- Exhibit A Definition of Services
- Exhibit B Payment Terms
- Exhibit C Insurance Requirements
- Exhibit D Debarment and Suspension Certification
- Exhibit E Contract Compliance Reporting Requirements
- Exhibit F IBM Customer Agreement
- Exhibit G IBM Agreement for Exchange of Confidential Information
- Exhibit H IBM International Passport Advantage Agreement
- Exhibit I IBM International Program License Agreement
- Exhibit J IBM International Passport Advantage Agreement Attachment for Appliance Services
- Exhibit K IBM International Passport Advantage Agreement, Attachment to Government Option
- Exhibit O Iran Contracting Act of 2010

The term of this Agreement shall be from September 23, 2014 through September 22, 2017.

The compensation payable to Contractor hereunder shall not exceed *one million two hundred forty-six thousand seven hundred eighty-three and twenty cents (\$1,246,783.20)* for the term of this Agreement.

C-10789

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF ALAMEDA
IBM Customer Number: 0924850
Enterprise Number: 0107000
IBM PPA Agreement: 155492
IBM PPA Site: 3053994

CONTRACTOR:
INTERNATIONAL BUSINESS
MACHINES (IBM) CORPORATION

By: Keith Carson
Signature

By: Devin Brown
Signature

Name: KEITH CARSON
(Printed)

Name: Devin F. Brown
(Printed)

Title: President of the Board of Supervisors

Title: Client Executive, CA Public Sector

Date: 9/5/14

Approved as to Form:

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By: Victoria Wu

By: Print Name VICTORIA WU
County Counsel Signature

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such amounts.

In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of County.

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the County determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, County may upon two week's notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments

2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda, its Board of

Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

3. **INSURANCE AND BOND:** Contractor shall at all times during the term of the Agreement with the County maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Contractor's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Contractor's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Contractor's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self-insurance shall be called upon to protect it as a named insured.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar

character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.

5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the Contractor nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
6. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.
 - b. **Accidents:** If a death, serious personal injury or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.
 - c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.

7. **DEBARMENT AND SUSPENSION CERTIFICATION:** (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).
 - a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
 - b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
8. **PAYMENT:** For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.
9. **TRAVEL EXPENSES:** Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.
10. **TAXES:** Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.
11. **OWNERSHIP OF DOCUMENTS:** Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the County and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, respecting in any way the subject matter of this Agreement.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In Contractor's contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the County the aforesaid assignment and license rights as to that Contractor's Documents and Materials. Contractor agrees to defend, indemnify and hold the County harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the County harmless from any claims for infringement of patent or copyright arising out of such selection. The County's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the County by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the

performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.

13. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
Social Services Agency – Contracts Office
2000 San Pablo Ave., 4th Floor
Oakland, CA 94612
Attn: Muang Saechao

To Contractor: IBM Corporation
2710 Gateway Oaks Drive
South Building, Suite 200
Sacramento, CA 95833
Attn: Devin F. Brown

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective

as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. **USE OF COUNTY PROPERTY:** Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
15. **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:** Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
 - a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by the County, Contractor shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.

16. **DRUG-FREE WORKPLACE:** Contractor and Contractor's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement
17. **AUDITS; ACCESS TO RECORDS:** The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the County, make such books and records available to the County for inspection at a location within County or Contractor shall pay to the County the reasonable, and necessary costs incurred by the County in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to County for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three (3)

years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by County), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County's last payment to Contractor under this Agreement.

19. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. **TERMINATION:** The County has and reserves the right to suspend, terminate or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its PureApplication Server goods and services shall not exceed \$1,246,783.20 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.
21. **SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION:**

Contractor has been approved by County to participate in contract without SLEB participation (*SLEB waiver no. 3183, attached*). As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the contract should change, Contractor may be required to immediately comply with the County's Small and Emerging Local Business provisions, including but not limited to:

- a. Contractor must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).
- b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- c. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the contract. Contractor shall ensure that their own certification status and/or that of

participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.

- d. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
- e. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

County will be under no obligation to pay contractor for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor- Controller's Office of Contract Compliance (OCC) located at 1221 Oak St., Rm. 249, Oakland, CA 94612 at Tel: (510) 891-5500, Fax: (510) 272-6502 or via E-mail at ACSLEBcompliance@acgov.org.

- 22. **FIRST SOURCE PROGRAM:** For contracts over \$100,000, Contractor shall provide County ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Contractor has available during the contract term before advertising to the general public.
- 23. **CHOICE OF LAW:** This Agreement shall be governed by the laws of the State of California.
- 24. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- 25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall

constitute the entire agreement between County and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

26. HEADINGS herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
27. ADVERTISING OR PUBLICITY: Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance.
28. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. ASSURANCE OF PERFORMANCE: If at any time County believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the Services as required by this Agreement, County may request from Contractor prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
30. SUBCONTRACTING/ASSIGNMENT: Contractor shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's prior written approval.

- c. Contractor shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, including, without limitation, Exhibit C. Contractor shall verify subcontractor's compliance.
 - d. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.
- 31. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.
- 32. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
- 33. **PATENT AND COPYRIGHT INDEMNITY:** Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County's prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.
 - a. If Contractor is obligated to defend County pursuant to this Section 33 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with County's defense and/or settlement of such proceeding.

- b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.
 - c. Notwithstanding this Section 33, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
34. OTHER AGENCIES: Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.
35. EXTENSION: This agreement may be extended for two additional one year terms by mutual agreement of the County and the Contractor.
36. SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

[END OF GENERAL TERMS AND CONDITIONS]

ADDITIONAL PROVISIONS

1. Governing Terms

The General Terms and Conditions do not apply to this contract.

The IBM Customer Agreement, this Additional Provisions to the Standard Services Agreement – Contract No. 10789, the IBM Agreement for Exchange of Confidential Information, the IBM Passport Agreement, the IBM Passport Agreement Attachment for Appliance Services, and all other Exhibits to the Standard Services Agreement, Contract No. 10789 shall be the only terms governing the rights and obligations between IBM and the County.

In the event of any inconsistency among these documents, the following order of precedence shall apply:

- 1) The Additional Provisions to the Standard Services Agreement, Contract No. 10789
- 2) Exhibit A, Definition of Services
- 3) The Statement of Work, if any
- 4) Exhibit F, The IBM Customer Agreement
- 5) Exhibit G, The IBM Agreement for Exchange of Confidential Information
- 6) Exhibit H, The IBM International Passport Advantage Agreement
- 7) Exhibit J, The IBM International Passport Advantage Agreement, Attachment for Appliance Services
- 8) All other Exhibits to the Standard Services Agreement, Contract No. 10789

2. Additional Terms and Conditions to the IBM Customer Agreement (“The Agreement”)

- a. INDEPENDENT CONTRACTOR: No relationship of employer and employee is created by this Agreement; it being understood and agreed that IBM is an independent Contractor. IBM is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by IBM nor for any obligations or liabilities incurred by IBM.

IBM shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security,

disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

- b. **INDEMNIFICATION:** To the fullest extent permitted by law, IBM shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all third party claims for damages for which IBM is legally liable to that third party, and pay all costs, damages and attorneys' fees that a court finally awards or that are included in a settlement approved by IBM, provided that such third party claim is attributable to bodily injury, sickness, disease, death or to injury to or destruction of real property or tangible personal property, (collectively Liabilities") and further provide that the County shall promptly notify IBM in writing of the claim and allow IBM to control and will cooperate with IBM in the defense and any related settlement negotiations, except where such Liabilities are caused by any indemnitee or third party. The County may participate in the defense of any such claim at its own expense without relieving IBM of any obligation hereunder.
- c. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., IBM shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.
- d. **WORKERS' COMPENSATION:** IBM shall provide Workers' Compensation insurance, as applicable, at IBM's own cost and expense and further, neither the IBM nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
- e. **PAYMENT:** For services performed in accordance with this Agreement, payment shall be made to IBM as provided in Exhibit B hereto.
- f. **TRAVEL EXPENSES:** IBM shall not be allowed paid travel expenses unless set forth in this Agreement.
- g. **TAXES:** Payment of all applicable federal, state, and local taxes shall be the sole responsibility of IBM.

- h. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The IBM covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. IBM represents to and agrees with the County that to the best of its knowledge and belief IBM has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County. The parties agree that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential in accordance with the Agreement for Exchange of Confidential Information incorporated herein as Exhibit G.
- i. **NOTICES:** All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox.

Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. **Telex or facsimile transmission:** When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
Social Services Agency
2000 San Pablo Avenue 4th Floor
Oakland, California 94612
Attn: Muang Saechao

To IBM: IBM Corporation
2710 Gateway Oaks Drive
South Building, Suite 200
Sacramento, CA 95833
Attn: Devin Brown

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

- j. **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:** IBM assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
- k. **DRUG-FREE WORKPLACE:** IBM and IBM's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither IBM nor IBM's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If IBM or any employee of IBM is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the IBM within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
- l. **AUDITS; ACCESS TO RECORDS:** The IBM shall make available to the County, its authorized agents, officers, or employees, for examination any

and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by IBM.

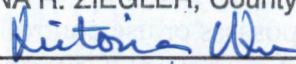
The IBM shall maintain full and adequate records in the performance of this Agreement. If such books and records are not kept and maintained by IBM within the County of Alameda, California, IBM shall, upon request of the County, make such books and records available to the County for inspection at a location within County. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the IBM shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and IBM with respect to this Agreement are closed, whichever is later. Nothing herein shall require IBM to disclosure cost, profit and overhead data, including both direct and indirect rates, markups, profit margins or confidential employee records and other trade secret information.

m. CHOICE OF LAW: This Agreement shall be governed by the laws of the State of California.

3. Exhibit E – Contract Compliance Reporting Requirements does not apply to this contract.

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By 

Print Name VICTORIA WU

County Counsel Signature: _____

SOCESA

Req. #/Date

6844



OFFICE OF ACQUISITION POLICY (OAP)

3183✓

MI

P.O. #

REQUEST FOR AUTHORIZATION TO WAIVE SLEB PROGRAM REQUIREMENTS*

For ALL Requests over \$3,000: Complete 1-9 & 10 below (First Source) if over \$100,000, sign and print your name on line 11, submit hard copy with supporting documentation for approval to GSA-OAP Business Outreach Officer, QIC 26021 AND email soft copy (PDF or Word) to nakia.neal@acgov.org. Upon approval, the procurement will be processed by GSA Purchasing.

For Requests over \$25,000, a SLEB Waiver Number will be issued. This number is required to enter a Procurement Contract in ALCOLINK. OAP will email signed approvals (as appropriate, with Waiver Number) and denials to Requesting Departments, GSA Purchasing and Auditor Controller Office of Contract Compliance (OCC).

1. Please check appropriate box and complete department/contact information below.

☒ Requesting Department ☐ GSA Purchasing managing the competitive process
Department: AAF Contact: Jerome Graham Email: jgraham@acgov.org Telephone #: 510.645.9358

2. Recommended Non-SLEB Vendor (Name): International Business Machines Corporation.

Street Address: PO Box 643600 City, State & Zip: Pittsburgh, PA 15264-3600

3. Total Contract Value: \$6,246,783.20 Contract Term Start Date: 9/23/14 End Date: 9/22/17 One-Time Purchase ☐

4. Procurement Type (check all appropriate boxes below):

☐ New Contract ☒ Renewal Contract ☒ Contract Amendment-Term ☒ Contract Amendment-Value ☐ Other: _____

5. Goods/Services Procurement Description: Hardware and Software System Upgrade and Maintenance Renewal for SSIRS Data Warehouse

6. Brief explanation of why goods/services are required: The Hardware and Software System Upgrade will allow SSA to meet the growing needs of our Business Intelligence Reporting and Operational Database Warehouse functions currently being provided to SSA staff and customers

7. Date Goods/Services Needed: 9/23/14

a. What are the consequences if the date goods/services needed is not met? Social Services will not retain the discount on the purchase price, and will not be able to enhance our ability create and analyze new and existing data in its Integrated Reporting system

8. Explanation of why the non-SLEB contractor/subcontractor (in #2 above) is being recommended and why they are unable to subcontract with a SLEB(s) for a minimum of 20%: Proprietary software being used is the same as what the system was implemented

9. Explain what attempts were made to locate a SLEB prime or subcontractor(s), including:

- ☐ Copies of bids received and/or detailed statement of efforts made to contact and negotiate with certified businesses, including list of SLEBs contacted, names of individuals, addresses, phone numbers, dates contacted and bid prices attached
- List of items or selected portions of work proposed to be performed by certified business in order to increase the likelihood of achieving the stated goal:
- Description of information provided to certified contractors/subcontractors regarding the plans, specifications and anticipated time schedule for portions of the work to be performed:

10. If the contract is over \$100,000, is the recommended vendor able to comply with the First Source Program?

Yes: ☐ No: ☐ If No, explain: n/a

11. Department Certification: I certify to the accuracy of the preceding statements,

Signature of Agency/Department Head or Designee or GSA Purchasing Manager (if GSA Purchasing managed the process)

Print Name

Date

OAP to complete below:

A. Request Approved: ☒ Waiver Valid Through 9/22/17

SLEB Waiver Number: 3183

Reason: Sole Source

B. Request Denied: ☐

Reason:

Approved by GSA-Office of Acquisition Policy (Required)

Date

*Procurements using Federal grant funds that prohibit geographical preferences require the Federal Grant Funds SLEB Waiver Request form to be completed and submitted for approval to the Auditor-Controller OCC prior to soliciting bids/proposals and awarding contracts. See the Waiver Request Procedure for Federal Grant Funds Procurements in UPM (in the online County Document Center) for further information or contact the OCC at (510) 891-5500.

EXHIBIT A

DEFINITION OF SERVICES

- I. Contractor shall provide PureApplication Server SSIRS data warehouse upgrade goods and services with the specific requirements and deliverables set forth on this Exhibit A.
 - a. The Contractor's proposal may be relied upon to interpret this Contract and shall be applied in such a manner so that the obligations of the Contractor are to provide the County with the broadest scope of services for the best value.
- II. IBM Responsibilities

PureStart Services

The PureStart Services is designed to get a better understanding of County requirements and current capabilities for delivering applications that handle critical business applications. With the information gathered, IBM will create a high-level deployment plan for deploying the applications on the PureApplication system. These services also include operations mentoring and training as well as post production support.

Deliverables: Statement of Work (SOW) plan (soft copy)

Activity 1 – Initial PureApplication configuration and setup

The purpose of this activity is to configure the PureApplication system for initial development. IBM will configure one (1) PureApplication System and perform the following:

- 1. Set up IP groups, two (2) cloud groups, and one (1) environment profile
- 2. Configure basic security

Deliverables: None

Delivery Method: On-site consultant

Estimated Effort: 8 Hours (1 Day)

Activity 2 – Preparing basic operations team

This activity is to assist County of Alameda in defining key roles for operating and management of the PureApplication System and filling them from the current organization. IBM will perform the following:

1. Understand IT management and support structure responsible for the application. Consider existing processes and County of Alameda's desired future state for these processes:
 - a. Application lifecycle process (e.g. development, testing, change management)
 - i. Change management processes
 1. Deployment process for applications
 2. Deployment process for infrastructure (i.e. fixes, and upgrades)
 3. Release promotion processes
 4. Tools for change management
 - ii. Continuous build and deployment automation
 1. Automation methods
 2. Tools
 - b. Maintenance and support processes (e.g. monitoring, problem identification and resolution, etc.).
 - i. Monitoring and escalation processes
 - ii. Historical IBM PMRs
 - iii. Known issues
 - iv. Known workarounds
 - c. Relevant compliance standards and policies and governance procedures (e.g. HIPPA, DOD compliant)
 - i. Industry specific standards
 - ii. Hardware compliance standards
 - iii. OS compliance standards
 - iv. Network compliance standards
 - v. Application compliance standards
 - vi. Data privacy
 - d. Organizations and roles participating in aforementioned processes. Will identify who is responsible for each of the following:
 - i. Middleware administration
 - ii. Application installation, configuration and deployment
 - iii. Application acceptance after testing
2. Understand IT organizations and processes responsible for managing the infrastructure supporting the application. Areas IBM will investigate include:
 - a. Maintaining and configuring of hardware, including PureApplication system
 - i. Identify persons responsible for system provisioning
 - ii. System provisioning processes, response times for provisioning new systems, releasing for use, (e.g, OS validation, NFS configuration)
 - iii. Management agents that need to be installed, such as backup

- b. Network administration
 - i. Identify persons responsible for network administration
 - ii. Network provisioning processes, response times for new subnet requests, FW rule changes, DNS administration
 - iii. Network Policies
 - c. Security administration
 - i. Identify persons responsible for identity management
 - ii. Identity management processes, directory administration, user and group administration
 - iii. Encryption requirements, PKI certificate management, requirements
 - iv. Operating system security requirements
 - v. Middleware security requirements
 - d. Monitoring of infrastructure, including tracking SLA compliance
 - i. Monitoring software used, agents that need to be installed
 - ii. Monitoring servers that need to be visible to the VMs on PureApplication System
 - iii. Monitoring software licensing constraints
 - e. Maintaining scalability and resiliency: high availability, disaster recovery
 - i. Scope of scalability and resiliency capabilities – data center, hardware (i.e. IPAS), networks, cells, nodes, applications
 - f. Incident management (problem identification, reporting, tracking, resolution)
 - i. Root Cause Analysis (RCA)
 - ii. Resolutions for the RCA
 - iii. Prioritization for findings and Resolutions
 - g. Change management processes for various environments, average response times
3. Collaborate with County of Alameda on assigning its resources to relevant PureApplication management roles

Deliverables: None

Delivery Method: On-site consultant

Estimate Effort: 32 Hours (4 Days)

Activity 3 – PureApplication education and enablement

This activity is to train County of Alameda staff on how to properly use the PureApplication System. This on-site training will be delivered over 5 days and will cover the following topics:

1. PureApplication Basics: terminology, system components, system console, patterns overview
2. PureApplication Operations: monitoring, maintenance, backup/restore approaches, security, application onboarding and migrations, organization structure, DevOps concepts, PureApplication management best practices
3. Pattern Development

At the conclusion of training, assessment and planning questionnaires will be distributed to County of Alameda staff in preparation for Activity 4: Project Planning.

Deliverable: Training presentations (softcopy)

Delivery Method: On-site consultant

Estimate Effort: 40 Hours (1 Week)

Activity 4 – Project planning

The objective of this activity is to assist County of Alameda in defining an initial project to implement an application on the PureApplication system and developing a high-level project plan. IBM will perform the following:

1. Review County of Alameda responses from assessment and planning questionnaires
2. Review County of Alameda proposed solution design or assist County of Alameda in drafting a basic solution design
3. Assist County of Alameda in selecting an initial project
4. Create a high level deployment plan that will:
 - a. Set key milestones
 - b. Outline roles and responsibilities during the PureApplication implementation
 - i. List available resources from the client such as:
 1. Project manager
 2. Network architect
 3. Hardware architect
 4. System architect
 5. DB architect
 6. Application architect

- ii. Resource allocation hours in %
- c. Confirm project staff on-boarding requirements to provide access to County networks and facilities (VPNs, laptops, badges, background checks, regulatory training, etc)
- d. Define work locality requirements (on-site, remote, County site locations)
- e. Define a high level schedule for pattern development
- f. Identify resources needed to complete the pattern development
- g. Estimate project cost

Deliverable: High level deployment plan document (softcopy format)

Delivery Method: On-site consultant

Estimate Effort: 80 Hours (2 Weeks)

Activity 5 – Technical Account Manager Support

IBM will provide a Technical Account Manager (TAM) who will assist named callers with the operation of the IBM PureApplication System(s), for 60 days. Technical support will primarily be performed remotely. The TAM will perform the following tasks:

1. Continuity with pre-sales activity: will provide continuity with any POT/POC activities, ensuring a clear understanding of goals and expectations.
2. Establish support procedures: will educate client on the support process, tools, proactive measures, expectations and escalation process to ensure successful collaboration between IBM and the client. IBM will provide Named Callers guidance and assistance as detailed in attached SOAs with the intention of reducing or preventing problems from occurring in County's environment.
3. Serve as single point of contact for all support activities: this is in addition to the established support process. IBM will provide regular status updates, facilitate communications between County and IBM regarding problems, drive resolution of open issues, and provide bi-weekly management reports on activity.
4. Share best practices: IBM will facilitate County skills development related to the Pure Application product by sharing best practices and education

Deliverable: None

Delivery Method: Dedicated Remote Support

Duration: 60 Days (starting from Day 1 of engagement)

III. County of Alameda Responsibilities

The County of Alameda will designate a Project Manager who will be the focal point for the IBM communications relative to this project and will have the authority to act on behalf of the County in all matters regarding this project. The County Project Manager's responsibilities include:

1. Manage County of Alameda personnel and responsibilities for this project.
2. Serve as the interface between IBM and all County of Alameda departments participating in the project.
3. Administer the Change Order Request process with the IBM Project Manager, as needed.
4. Participate in project status meetings as reasonable and practical.
5. Obtain and provide information, data, and decisions within a reasonable amount of time, normally three (3) working days of IBM's request.
6. Resolve deviations from the estimated schedule, which are reasonably caused by County of Alameda.
7. Help resolve project issues and escalate issues within County of Alameda's organization, as necessary.
8. Review with the IBM Project Manager any invoice or billing requirements.

IV. Project Assumptions

1. Work will be performed at the County's Oakland, CA location. Some work may be performed remotely.
2. Work will be performed during normal business hours M-F 8:30am – 5:15pm, local time, except holidays.

V. Estimated Schedule

The Services start date will be determined by both parties upon execution of the SOW.

VI. Charges

PureStart Services will be conducted on a fixed price basis. The fixed price for performing the services defined in the SOW will be \$60,000. This fixed price is exclusive of any travel and living expenses, which are estimated at \$8,000.

VII. Contractor project team will consist of the following assigned Key Personnel, as applicable during the contract term:

Bob Ringo	PureApplication Technical Professional
Krishna (Prasad) Doddi	PureApplication Technical Professional
Installation Engineer	IBM PureApplication Installation Engineer
Consulting IT Specialist	IBM ISSW Services Specialist

Contractor agrees that it shall not transfer or reassign the individuals assigned as Key Personnel or substitute subcontractors without the express written agreement of County, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make a good faith effort to present to County an individual with greater or equal qualifications as a replacement subject to County's approval, which approval shall not be unreasonably withheld.

VIII. The approval of County to a requested change shall not release Contractor from its obligations under this Agreement.

EXHIBIT B-1

PAYMENT TERMS

1. County will use its best efforts to make payment to Contractor upon successful completion and acceptance of the services detailed in Exhibit A within thirty (30) days upon receipt and approval of invoice.
2. IBM will only invoice and County will only pay for services performed in accordance with the SOW. Invoices will be reviewed for approval by the County. Contractor shall submit all invoices and other documents as required to:

Social Services Agency
2000 San Pablo Ave., 4th Floor
Oakland, CA 94612
Attn: Jerome Graham

3. Total payment under the terms of this Agreement will not exceed the total amount of \$1,246,783.20. This cost includes all taxes and all other charges.
4. Upon award of this Agreement by County, County and Contractor shall forthwith jointly create a schedule governing the timely performance of Contractor's services hereunder. The agreed upon schedule shall be incorporated into this Agreement upon its adoption by the parties and thereafter Contractor shall perform all services under this Agreement in conformance with the schedule.
5. Upon notice to proceed from County, Contractor shall perform in accordance with all terms and conditions of this Agreement and Exhibits and Attachments.

EXHIBIT B-2**PRICE SCHEDULE**

Item / Part No.	Quantity	Unit Price	Extended Amount	Taxable
IBM Business Intelligence Pattern Install License + SW Subscription & Support 12 Months 001 D0NWGLL	1	\$1,900.94	\$1,900.94	No
IBM Business Intelligence Pattern Install Annual SW Subscription & Support Renewal 24 Months 002 E0DINLL	1	\$391.60	\$391.60	No
IBM Business Intelligence Pattern Install Annual SW Subscription & Support Renewal 36 Months 003 E0DINLL	1	\$403.34	\$403.34	No
IBM PureApplication System W2500-64m Appliance Install Appliance + Subscription and Support 12 Months 006 D14UILL County Requested Arrival Date: 23- Sept-2014	1	\$807,500.00	\$807,500.00	Yes
IBM PureApplication System W2500-64m Appliance Install Annual Appliance Maintenance + Subscription and Support Renewal 12 Months 004 E0JIFLL	1	\$149,710.50	\$149,710.50	No
IBM PureApplication System W2500-64m Appliance Install Annual Appliance Maintenance + Subscription and Support Renewal 12 Months 005 E0JIFLL	1	\$154,201.82	\$154,201.82	No
Subtotal			\$1,114,108.20	
Applicable Sales Tax @ 9%			\$72,675.00	
Total			\$1,186,783.20	
PureStart Services			\$60,000.00	
GRAND TOTAL			\$1,246,783.20	

EXHIBIT C

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease
D	Endorsements and Conditions: 1. ADDITIONAL INSURED: All insurance required above with the exception of Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives. 2. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. 3. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies shall be primary insurance to any insurance available to the Indemnified Parties and Additional Insured(s). Pursuant to the provisions of this Agreement, insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. 4. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. 5. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. 6. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by any one of the following methods: – Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured (covered party), or at minimum named as an "Additional Insured" on the other's policies. – Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured. 7. CANCELLATION OF INSURANCE: All required insurance shall be endorsed to provide thirty (30) days advance written notice to the County of cancellation. 8. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent to: - SSA Contracts Office: 2000 San Pablo Ave. 4th Floor, Oakland, CA 94612 - With a copy to Risk Management Unit (125 – 12th Street, 3rd Floor, Oakland, CA 94607)	



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
7/9/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. New York, NY 199 Water Street New York, NY 10038-3551 USA	CONTACT NAME: PHONE (A/C No. Ext): FAX (A/C No.): E-MAIL: ADDRESS:												
INSURED International Business Machines Corp. & Any Other Subsidiary Corp. Owned or Controlled by the Insured 1 New Orchard Road Armonk, NY 10504 United States	<table border="1"><thead><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A: ACE American Insurance Company</td><td>22667</td></tr><tr><td>INSURER B: ACE Property & Casualty Insurance Company</td><td>20699</td></tr><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr></tbody></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: ACE American Insurance Company	22667	INSURER B: ACE Property & Casualty Insurance Company	20699						
INSURER(S) AFFORDING COVERAGE	NAIC #												
INSURER A: ACE American Insurance Company	22667												
INSURER B: ACE Property & Casualty Insurance Company	20699												

COVERAGES **CERTIFICATE NUMBER:** 210281 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC OTHER:	X		HDO G27334556	5/21/2014	5/21/2015	EACH OCCURRENCE \$ \$10,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ \$10,000,000 MED EXP (Any one person) \$ \$25,000 PERSONAL & ADV INJURY \$ \$10,000,000 GENERAL AGGREGATE \$ \$10,000,000 PRODUCTS - COMP/OP AGG \$ \$10,000,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS	X		ISA H08820491	5/21/2014	5/21/2015	COMBINED SINGLE LIMIT (Ea accident) \$ \$5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED \$ RETENTION \$			X00 G2 73 80 03 7	5/21/2014	5/21/2015	EACH OCCURRENCE \$ \$5,000,000 AGGREGATE \$ \$5,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Automobile Liability limits over \$5,000,000 are evidenced by the Excess (Umbrella) Liability Policy.
Please see page 2 for any additional language.

CERTIFICATE HOLDER **CANCELLATION**

COUNTY OF ALAMEDA- Social Services Agency 2000 San Pablo Ave. 4th Floor Oakland, CA 94612 United States	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Authorized Representative: Aon Risk Services Northeast, Inc. <i>Aon Risk Services Northeast, Inc.</i>

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ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, inc. New York, NY 199 Water Street New York, NY 10038-3551 USA	NAMED INSURED International Business Machines Corp. & Any Other Subsidiary Corp. Owned or Controlled by the Insured 1 New Orchard Road Armonk, NY 10504 United States
EFFECTIVE DATE: 5/21/2014	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

COUNTY OF ALAMEDA- Social Services Agency is hereby named as an additional insured on General Liability policy but only to the extent that their interest may appear.

COUNTY OF ALAMEDA- Social Services Agency is hereby named as an additional insured on Auto Liability policy but only to the extent that their interest may appear.

Project: Pure Services Contract

If there is a question regarding this certificate please contact Monica Davis
(Email: davisma@us.ibm.com Phone: 520-219-3271)

All operations incidental to the conduct of insured's business in the United States of America.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/9/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. 199 Water Street New York, NY 10038 Phone: 866.266.7475 Fax: 866.467.7847	CONTACT NAME: _____ PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____ PRODUCER CUSTOMER ID #: _____
INSURED International Business Machines Corp. 1 New Orchard Road Armonk, NY 10504 United States	INSURER(S) AFFORDING COVERAGE INSURER A: Liberty Mutual Fire Insurance Company INSURER B: LM Insurance Corp. INSURER C: National Union Fire Insurance Company of Pittsburgh, PA NAIC #

COVERAGES

CERTIFICATE NUMBER: 210280

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DEDUCTIBLE RETENTION \$						EACH OCCURRENCE AGGREGATE
A B B B C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N ☐ No N/A			ELA-621-004158-844 (VI) WAS-62D-004158-444 (AOS) ** WAS-62D-004158-874 (MN) WCS-621-004158-154 (WI) EWS-62N-004158-694 (Excess OH) 83-139820 (Guam)	1/1/2014 1/1/2014 1/1/2014 1/1/2014 1/1/2014	1/1/2015 1/1/2015 1/1/2015 1/1/2015 1/1/2015	☒ WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT \$5,000,000 E.L. DISEASE - EA EMPLOYEE \$5,000,000 E.L. DISEASE - POLICY LIMIT \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

** Includes EL coverage for monopolistic states ND, PR, WA, WY

** (AOS) = All Other States

Please see page 2 for any additional language.

CERTIFICATE HOLDER**CANCELLATION**

COUNTY OF ALAMEDA- Social Services Agency 2000 San Pablo Ave. 4th Floor Oakland, CA 94612 United States	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Authorized Representative: Aon Risk Services Northeast, Inc. <i>Aon Risk Services Northeast, Inc.</i>

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ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, Inc. 199 Water Street New York, NY 10038 Phone: 866.266.7475 Fax: 866.467.7847	NAMED INSURED International Business Machines Corp. 1 New Orchard Road Armonk, NY 10504 United States
EFFECTIVE DATE: 01/01/2014	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Project: Pure Services Contract

If there is a question regarding this certificate please contact Monica Davis
(Email: davisma@us.ibm.com Phone: 520-219-3271)

All operations incidental to the conduct of insured's business in the United States of America.

EXHIBIT D

**COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION**

(Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:

- **Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;**
- **Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;**
- **Does not have a proposed debarment pending; and**
- **Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.**

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR NAME: International Business Machines (IBM) Corporation

PRINCIPAL: Devin F. Brown **TITLE:** Client Executive, CA Public Sector

SIGNATURE: Devin F. Brown **DATE:** 9/5/14

SAM Search Results
List of records matching your search for :

Search Term : international* business* machines*
Record Status: Active

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 835130485	+4:	CAGE Code: 3BXY7 DoDAAC:
Expiration Date: Jul 29, 2015	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 6710 ROCKLEDGE DRIVE		
City: BETHESDA	State/Province: MARYLAND	
ZIP Code: 20817-1834	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 119714236	+4:	CAGE Code: 15898 DoDAAC:
Expiration Date: Jul 11, 2015	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 1000 River St		
City: Essex Junction	State/Province: VERMONT	
ZIP Code: 05452-4201	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 084006741	+4:	CAGE Code: 2G381 DoDAAC:
Expiration Date: Apr 15, 2015	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 1101 Kitchawan Rd		
City: Yorktown Heights	State/Province: NEW YORK	
ZIP Code: 10598	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 183717651	+4:	CAGE Code: 15900 DoDAAC:
Expiration Date: Apr 15, 2015	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 650 HARRY RD		
City: SAN JOSE	State/Province: CALIFORNIA	
ZIP Code: 95120-6001	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 111410184	+4:	CAGE Code: 49EQ3 DoDAAC:
Expiration Date: Apr 15, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 800 N FREDERICK AVE City: GAITHERSBURG State/Province: MARYLAND ZIP Code: 20879-3326 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 790384072	+4:	CAGE Code: 1D185 DoDAAC:
Expiration Date: Apr 2, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 2070 Rte 52 City: HOPEWELL JUNCTION State/Province: NEW YORK ZIP Code: 12533-3507 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 933093676	+4:	CAGE Code: 526U1 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 6710 ROCKLEDGE DR City: BETHESDA State/Province: MARYLAND ZIP Code: 20817-1834 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 833239556	+4:	CAGE Code: 5VKA3 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 2300 DULLES STATION BLVD STE 200 City: HERNDON State/Province: VIRGINIA ZIP Code: 20171-6349 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 808190412	+4:	CAGE Code: 579A9 DoDAAC:
Expiration Date: Mar 20, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 11300 DR MARTIN LUTHER KING JR ST N STE 315 City: SAINT PETERSBURG State/Province: FLORIDA ZIP Code: 33716-2325 Country: UNITED STATES		

ENTITY:	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 965588424	+4:	CAGE Code: 67FJ6 DoDAAC:
Expiration Date: Mar 20, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 310 STATE RTE 956		
City: KEYSER	State/Province: WEST VIRGINIA	
ZIP Code: 26726-0000	Country: UNITED STATES	

ENTITY:	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 038253597	+4:	CAGE Code: 6E2D2 DoDAAC:
Expiration Date: Mar 20, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 299-300 LONG MEADOW RD		
City: STERLING FOREST	State/Province: NEW YORK	
ZIP Code: 10979-0000	Country: UNITED STATES	

ENTITY:	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 825382281	+4:	CAGE Code: 8W884 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 11107 Sunset Hills Rd Ste 500		
City: Reston	State/Province: VIRGINIA	
ZIP Code: 20190-5375	Country: UNITED STATES	

ENTITY:	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 827671913	+4:	CAGE Code: 55E89 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 7095 SAMUEL MORSE DR STE 200		
City: COLUMBIA	State/Province: MARYLAND	
ZIP Code: 21046-3417	Country: UNITED STATES	

ENTITY:	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 156472011	+4:	CAGE Code: 0K670 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 12902 FEDERAL SYSTEMS PARK DR		
City: FAIRFAX	State/Province: VIRGINIA	
ZIP Code: 22033-4421	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 827822300	+4:	CAGE Code: 55P83 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 6303 BARFIELD RD City: ATLANTA State/Province: GEORGIA ZIP Code: 30328-4233 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 060790131	+4:	CAGE Code: 1VZC6 DoDAAC:
Expiration Date: Mar 18, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 8123 S HARDY DR City: TEMPE State/Province: ARIZONA ZIP Code: 85284-1106 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 078392668	+4:	CAGE Code: 3U1B1 DoDAAC:
Expiration Date: Mar 18, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 15036 CONFERENCE CENTER DR City: CHANTILLY State/Province: VIRGINIA ZIP Code: 20151-3848 Country: UNITED STATES		

SAM Search Results
List of records matching your search for :

Search Term : devin* brown*
Record Status: Active

No Search Results

EXHIBIT E

**COUNTY OF ALAMEDA
CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within 5 business days in the System, immediately enter payments made to subcontractors and ensure that subcontractors confirm they received payments within 5 business days in the System. Subcontractors shall confirm their payments received from the prime contractor within 5 business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County should schedule a representative from their office/company, along with each of their subcontractors, to attend training. The training schedule may be viewed online at http://www.elationsys.com/elationsys/support_1.htm or call Elation Systems at (925) 924-0340. A special access code will be provided to contractors and subcontractors participating in this contract awarded to allow use of the System free of charge.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.

IBM Customer Agreement

This IBM Customer Agreement (called the "Agreement") governs transactions by which Customer purchases Machines, licenses ICA Programs, obtains Program licenses, and acquires Services (including, without limitation, customized development and support, business consulting, and maintenance Services) from International Business Machines Corporation ("IBM").

1 General Terms

11 Agreement Structure

This Agreement is organized in six Parts:

Part 1 – General Terms includes terms regarding Agreement Structure, Definitions, Acceptance of Terms, Delivery, Charges and Payment, Changes to Agreement Terms, IBM Business Partners, Intellectual Property Protection, Limitation of Liability, Compliance Verification, General Principles of Our Relationship, Agreement Termination, and Geographic Scope and Governing Law.

Part 2 – Warranties defines applicable Warranties for IBM Machines, ICA Programs, IBM Services, and Systems, and terms regarding Extent of Warranty.

Part 3 – Machines Terms includes Machine terms regarding Production Status, Title and Risk of Loss, and Installation.

Part 4 – Licenses for Machine Code and Other Internal Licensed Code includes the License for Machine Code and the License for Other Internal Licensed Code.

Part 5 – License for ICA Programs includes ICA Program terms regarding License, Distributed System License Option, Program Services, Compliance Verification, and License Termination.

Part 6 – Services Terms includes terms regarding Personnel, Materials Ownership and License, Customer Resources, Service for Machines (during and after warranty), Maintenance Coverage, Automatic Service Renewal, and Termination and Withdrawal of a Service.

12 Attachments and Transaction Documents

Additional terms for Products and Services are in documents called "Attachments" and "Transaction Documents" provided by IBM. In general, Attachments contain terms that may apply to more than one Product or Services transaction, while Transaction Documents (such as a statement of work, supplement, schedule, invoice, exhibit, change authorization, or addendum) contain specific details and terms related to each individual transaction. Customer may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

If there is a conflict among the terms of this Agreement, Attachments, and Transaction Documents, those of an Attachment prevail over those of this Agreement, and the terms of a Transaction Document prevail over those of both this Agreement and an Attachment.

13 Definitions

Authorized Built-in Capacity -- the Built-in Capacity for a Covered Machine that was Properly Acquired and Activated and is used in accordance with the AUT. For purposes of this definition, "Activated" means when IBM causes, directly or indirectly, the Authorized Built-in Capacity to be made available for Customer's use on a Covered Machine.

Authorized Use Table (AUT) -- the "IBM Authorized Use Table for Machines" that is provided at the following address: www.ibm.com/systems/support/machinewarranties/machinecode/aut.html and is in effect for a Covered Machine as of the acquisition date of the Covered Machine or, if there are one or more Machine Upgrades on the Covered Machine, then as of the acquisition date of the most recently acquired Machine Upgrade. The AUT is incorporated by reference into this Agreement.

Built-in Capacity -- the type and quantity of all resources and capabilities that IBM provides for a Machine, the access or use of which IBM has the ability to restrict by contract or Technological Measures. Built-In Capacity includes, without limitation, the type and quantity of the following: 1) processors, cores, processing capacity, processor performance setting and interactive processing capacity and capabilities; 2) memory; 3) storage; 4) cryptographic capability; 5) input/output ports, and 6) workload-specific resources and capabilities (including, for example, System z mainframe specialty processors such as

zIIPs, zAAPs and IFLs, and other limited purpose products (including "appliances"). Built-in Capacity is either Authorized Built-in Capacity or Unauthorized Built-in Capacity.

Circumvent -- to, directly or indirectly, by or through any means, alter, avoid, disrupt, subvert, go around, or otherwise interfere with.

Covered Machine -- the specific Machine (as identified by serial number or order number on a Transaction Document or other similar contract document issued by IBM) for which use of Machine Code is licensed. A Covered Machine that receives a Machine Upgrade remains a Covered Machine and a Machine that receives a Machine Upgrade becomes a Covered Machine.

Customer-set-up Machine -- an IBM Machine that Customer is responsible for installing according to instructions provided with it.

Date of Installation --

- a. for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;
- b. for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and
- c. for a Program --
 - (1) basic license, the second business day after the Program's standard transit allowance period,
 - (2) copy, the date (specified in a Transaction Document) on which IBM authorizes Customer to make a copy of the Program, and
 - (3) chargeable component (also called a feature), the date Customer uses the chargeable component or a copy. Customer agrees to notify IBM of the chargeable component's Date of Installation.

Designated Machine -- a Machine of a type specified in the Mainframe Exhibits provided at the following address: <http://www.ibm.com/systems/z/resources/swprice/reference/exhibits/hardware.html>.

Engineering Change -- an update to modify certain aspects of the design of an installed Machine, including without limitation the design of a certain Machine part or Machine Code.

Enterprise -- any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the Enterprise located in the United States.

IBM Machine -- a Machine bearing an IBM logo.

IBM Product -- an IBM Machine, ICA Program, or Other IBM Program.

ICA Program -- an IBM Program licensed under Part 5 of this Agreement.

Licensed Internal Code (called "LIC") -- another term for Machine Code commonly used for certain IBM product lines, such as for IBM System z Machines. LIC and Machine Code are interchangeable terms that have the same meaning.

Machine -- a hardware device, including its resources, capabilities, features, conversions, Machine Upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment).

Machine Code -- all of the following: (i) all code provided for an IBM Machine (including, without limitation, a Machine's firmware and microcode), excluding code that is licensed under a license agreement other than the license agreement governing use of Machine Code (for example, IBM operating system and middleware products); and (ii) records, data, and structures created, used or relied on by the code in item (i) (for example, IBM System z Machine LIC configuration control records and passwords that help restrict access or use of the code in item (i)). The term Machine Code specifically includes any whole or partial copy of Machine Code, and any fix, patch, or replacement provided for Machine Code.

Machine Upgrade -- the following changes that IBM sells for installation on a Machine: a hardware or Machine Code change to modify, add, remove, enable or disable certain Built-in Capacity or other resources and capabilities. Each such change can be accomplished through a Machine conversion, or through the conversion, addition, removal, or exchange of a Machine's feature(s).

Materials -- literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that IBM may deliver to Customer as part of a Service. The

term "Materials" does not include Programs, Machine Code, or other items available under their own license terms or agreements.

Non-IBM Program – a Program licensed under a separate third party license agreement.

Other IBM Program – an IBM Program licensed under a separate IBM license agreement (e.g., IBM International Program License Agreement).

Other Internal Licensed Code – code for a Covered Machine that is separately provided by IBM and licensed by a third party.

Product – a Machine or a Program.

Program – the following, including the original, any portion thereof, and all whole or partial copies:

- a. one or more sequences of instructions suitable for processing by a computer;
- b. control data (such as control blocks, event logs, configuration files) defined within or generated by the execution of such sequence(s) of instructions. Control data includes without limitation data that is designed to (i) manage or limit the operation of programs, or (ii) help monitor, record, manage, or limit the consumption of software or hardware resources, including, without limitation, data used in IBM's implementation of Technological Measures;
- c. components;
- d. audio-visual content (such as images, text, recordings, or pictures) defined within or generated by the execution of, such sequence(s) of instructions; and
- e. related licensed materials such as publications and other documentation.

The term "Program" includes any ICA Program, Other IBM Program, or Non-IBM Program, and any fix, patch or replacement that IBM may provide for a Program. The term does not include Machine Code or Materials.

Service – performance of a task, assistance, support, or access to resources (such as an information database) that IBM makes available to Customer.

Specifications – information specific to a Product. IBM Machine Specifications are in a document entitled "Official Published Specifications." ICA Program Specifications are in a document entitled "Licensed Program Specifications."

Specified Operating Environment – the Machines and Programs with which an ICA Program is designed to operate, as described in its Licensed Program Specifications.

Technological Measures – all means, methods, systems, processes, checks, tests, monitoring, validations, instruments, and other measures that IBM implements for the purpose of: (i) protecting, controlling, limiting, and restricting the use of Machine Code; (ii) protecting, controlling, limiting, and restricting the access to or use of Built-in Capacity (including, for clarity, both Unauthorized Built-in Capacity and Authorized Built-in Capacity); and (iii) monitoring and reporting use of the Machine Code, Authorized Built-in Capacity, and Unauthorized Built-In Capacity, including for the purpose of calculating usage-based charges for IBM Products. Without limiting the generality of the preceding sentence, Technological Measures may be implemented, in whole or in part, in Machine Code, IBM Programs, other code, other IBM technology, and in the data created, used or relied upon by such Machine Code, IBM Programs, other code, and IBM technology.

Unauthorized Built-in Capacity -- all Built-in Capacity for a Covered Machine other than Authorized Built-in Capacity. For example and for the avoidance of any doubt, each of the following is Unauthorized Built-In Capacity: (i) in the case of a processor authorized to operate at less than its full processor performance setting, the capability to operate the processor at a greater processor performance setting, and (ii) in the case of a System z Machine specialty processor, the capability to use the specialty processor for anything other than the "Authorized Uses" as such term is defined in the AUT.

1.4 Acceptance of Terms

Customer accepts the terms in Attachments and Transaction Documents by i) signing them (by hand or electronically), ii) using the Product or Service, or allowing others to do so, or iii) making any payment for the Product or Service.

A Product or Service becomes subject to this Agreement when IBM accepts Customer's order by i) sending Customer a Transaction Document, ii) shipping the Machine or making the Program available to Customer, or iii) providing the Service.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

15 Delivery

Delivery dates and ship dates are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document. For Programs IBM provides to Customer in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Customer and IBM.

16 Charges and Payment

1.6.1 Charges

A Transaction Document specifies the amount payable for Products or Services, based on one or more of the following types of charges: one-time, recurring, time and materials, or fixed price. Additional charges may apply (such as special handling or travel related expenses). IBM will inform Customer in advance whenever additional charges apply.

Recurring charges for a Product begin on its Date of Installation. Charges for Services are billed as specified in a Transaction Document, which may be in advance, periodically during the performance of the Service, or after the Service is completed. Unless otherwise provided in this Agreement (including any applicable Attachment or Transaction Document): i) Services for which Customer prepaids must be used within the applicable contract period; and ii) IBM does not give credits or refunds for any prepaid or other charges already due or paid.

If a Transaction Document provides an estimated total charge for time and materials or for usage charges, the estimate is for planning purposes only. IBM invoices charges based on actual time and materials expended or Customer's actual or authorized use, subject to any specified minimum commitment.

1.6.2 Usage Charges

One-time and recurring charges may be based on measurements of actual or authorized use (for example, authorized capacity for Machines, number of users or processor size for Programs, or meter readings for maintenance Services). Customer agrees to provide actual usage data as described in an Attachment or Transaction Document.

If Customer makes changes to its environment that impact usage charges, Customer agrees to promptly notify IBM and pay any applicable charges. Recurring charges will be adjusted accordingly. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.

1.6.3 Changes to Charges

From time to time, IBM may change its charges. Customer receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.

Unless provided otherwise in an Attachment or Transaction Document, IBM may increase recurring charges for Products and Services, as well as labor rates and minimums for Services provided under this Agreement, by giving Customer three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date IBM specifies in the notice.

IBM may increase one-time charges without notice. However, an increase to one-time charges does not apply to Customer if i) IBM receives the order before the announcement date of the increase and ii) one of the following occurs within three months after IBM's receipt of the order:

- a. IBM ships Customer the Machine or makes the Program available to Customer;
- b. Customer makes an authorized copy of a Program or distributes a chargeable component of a Program to another Machine; or
- c. a Program's increased use charge becomes due.

1.6.4 Payment

Amounts are due upon receipt of invoice and payable within 30 days or as specified in a Transaction Document. Customer agrees to pay accordingly, including any late payment fee. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties.

1.6.5 Taxes

If any authority imposes upon any transaction under this Agreement a duty, tax, levy, or fee, excluding those based on IBM's net income, then Customer agrees to pay that amount as specified in an invoice, unless Customer supplies exemption documentation. Customer is responsible for any personal property

taxes for each Product from the date IBM ships it to Customer. For Programs that IBM delivers electronically to Customer and for which Customer claims a state sales and use tax exemption, Customer and IBM agree that no tangible personal property (e.g., media and publications) is transferred to Customer.

Additional taxes and tax related charges may apply if IBM personnel are required to perform Services outside their normal tax jurisdiction. As practical, IBM will work to mitigate such additional tax and tax-related charges and will inform Customer in advance if these additional charges apply and are payable by Customer.

1.7 Changes to the Agreement Terms

In order to maintain flexibility in our business relationship, IBM may change the terms of this Agreement by providing Customer at least three months' written notice. However, these changes are not retroactive. They apply, as of the effective date IBM specifies in the notice, only to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, Customer may request that IBM defer the change effective date until the end of the current contract period.

Customer acknowledges its agreement to have these changes apply for such transactions by i) placing new orders for Products or Services after the change effective date, ii) failing to request that the change effective date be deferred until the start of the next renewal period, iii) allowing transactions to renew after receipt of the change notice, or iv) failing to terminate non-expiring transactions prior to the change effective date. Changes to charges are implemented as described in the Charges and Payment section above.

Otherwise, for a change to be valid, both parties must sign it.

1.8 IBM Business Partners

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Products and Services. Customer may order Products or Services that are promoted or marketed to Customer by IBM Business Partners or other suppliers, however, i) this Agreement applies only if a Transaction Document subject to this Agreement is provided for the specific transaction, and ii) such Business Partners and suppliers remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or other suppliers, any obligations either has to Customer, or any products or services that they supply to Customer under their agreements.

1.9 Intellectual Property Protection

For purposes of this Intellectual Property Protection section, the term "Product" also includes Materials and Machine Code.

1.9.1 Third-Party Claims

If a third party asserts a claim against Customer that an IBM Product that IBM provides to Customer under this Agreement infringes that party's patent or copyright, IBM will defend Customer against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved in advance by IBM, provided that Customer:

- a. promptly notifies IBM in writing of the claim;
- b. allows IBM to control, and cooperates with IBM in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with the Product's applicable license terms and Customer's obligations under section 1.9.2 (Remedies) below.

1.9.2 Remedies

If such a claim is made or appears likely to be made, Customer agrees to permit IBM, in IBM's discretion, either to i) enable Customer to continue to use the Product, ii) modify it, or iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, then on IBM's written request, Customer agrees to promptly return the Product to IBM and discontinue its use. IBM will then give Customer a credit equal to:

- a. for a Machine, Customer's net book value calculated according to generally-accepted accounting principles;

- b. for an ICA Program, the amount Customer paid IBM for the Program's license or 12 months' charges (whichever is less); and
- c. for Materials, the amount Customer paid IBM for the creation of the Materials.

1.9.3 Claims for Which IBM is Not Responsible

IBM has no obligation regarding any claim based on any of the following:

- a. anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. a Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, to the extent a claim could have been avoided by using the current release or version;
- c. any modification of a Product made by Customer or by a third party on Customer's behalf or the combination, operation, or use of a Product with any other Product, hardware device, program, data, apparatus, method, or process;
- d. the distribution, operation or use of a Product outside Customer's Enterprise;
- e. running or executing an ICA Program on other than a Designated Machine; or
- f. a non-IBM Product or an Other IBM Program.

This Intellectual Property Protection section states IBM's entire obligation and Customer's exclusive remedy regarding any third party intellectual property claims.

1.10 Limitation of Liability

1.10.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Product or Service or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of \$100,000 or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this Limitation of Liability section, the term "Product" also includes Materials and Machine Code.

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible. The following amounts are not subject to a cap on the amount of damages:

- a. payments referred to in the Intellectual Property Protection section above; and
- b. damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable.

1.10.2 Items for Which IBM Is Not Liable

Except as expressly required by law without the possibility of contractual waiver, under no circumstances is IBM, its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

- a. loss of, or damage to, data;
- b. special, incidental, exemplary, or indirect damages or for any economic consequential damages; or
- c. lost profits, business, revenue, goodwill, or anticipated savings.

1.11 Compliance Verification

Upon reasonable notice, IBM may verify the usage data and other information affecting the calculation of charges under this Agreement. Such verification will be conducted in a manner that minimizes disruption to Customer's business and may be conducted on Customer's premises, during Customer's normal business hours. Customer agrees to i) provide records, system tools outputs, and other electronic or hard copy system information reasonably necessary for such verification, and ii) promptly pay any additional, valid charges and other liabilities determined as a result of such verification.

IBM's right to verify Customer's usage data and other information affecting the calculation of charges also includes the right to verify Customer's compliance with all other terms of this Agreement (including

applicable Attachments and Transaction Documents). IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

Customer agrees to create, retain, and provide to IBM and its auditors written records, system tools outputs, and other system information sufficient to provide auditable verification that Customer's installation and running or executing ICA Programs complies with the Agreement terms, including IBM's applicable licensing and pricing terms. IBM will notify Customer in writing if any such verification indicates that Customer is not in compliance with Agreement terms. The rights and obligations in this section remain in effect during the period any ICA Programs are licensed to Customer and for two years thereafter.

1.11.1 Circumvention of Technological Measures

Customer will not (i) Circumvent or attempt to Circumvent any Technological Measures in an IBM Product or use a third party or third party product to do so, or (ii) in any way access, use, or attempt to access or use, Unauthorized Built-in Capacity.

1.12 General Principles of Our Relationship

1.12.1 Notices and Communications

Written communications, including notices to the receiving party's designated representative, are to be sent to the address (physical, e-mail or facsimile) specified in an applicable Attachment or Transaction Document. The parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

1.12.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments without obtaining Customer's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

Customer agrees not to resell any Service without IBM's prior written consent. Any attempt to do so is void.

Customer agrees to acquire each Machine with the intent to use it as designed and in the form it was sold within Customer's Enterprise and not for reselling, leasing, or transferring it, in whole or in part, to a third party, unless either of the following applies:

- a. Customer is arranging lease-back financing for the Machine; or
- b. Customer has paid IBM's list price or reference price, as applicable for the Machine, and does not remarket it in competition with IBM or IBM's authorized remarketers.

1.12.3 Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology Products and Services. IBM is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Products and Services that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular Products or Services under this Agreement meets the requirements of such laws. Neither party is obligated to take any action that would violate applicable law.

Each party will comply with all applicable export and import laws, regulations, and associated embargo and sanction regulations, including prohibitions on export for certain end uses or to certain end users.

1.12.4 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

1.12.5 Other Principles of Our Relationship

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Product or Service under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Each party grants only the licenses and rights specified in this Agreement. No other licenses or rights (including licenses or rights under patents) are granted either directly, by implication, or otherwise. The rights and licenses granted to Customer under this Agreement may be terminated if Customer fails to fulfill its applicable payment obligations.
- e. Customer agrees that IBM may process the business contact information of Customer's employees and contractors and information about Customer as a legal entity (contact information) in connection with IBM Products and Services or in furtherance of IBM's business relationship with Customer. This contact information can be stored, disclosed internally and processed by International Business Machines Corporation and its subsidiaries, Business Partners and subcontractors wherever they do business, solely for the purpose described above provided that these companies comply with applicable data privacy laws related to this processing. Where required by applicable law, Customer has notified and obtained the consent of the individuals whose contact information may be stored, disclosed internally and processed and will forward their requests to access, update, correct or delete their contact information to IBM who will then comply with those requests.
- f. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except as described in the Intellectual Property Protection section above or as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- g. Customer is responsible for selecting the Products and Services that meet its needs and for the results obtained from the use of the Products and Services, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- h. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.

1.13 Agreement Termination

Either party may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations under this Agreement, including any applicable Attachment or Transaction Document.

Either party may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply. License termination and termination of a Services transaction are described in Parts 5 and 6, respectively.

Any terms of this Agreement that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

1.14 Geographic Scope and Governing Law

The rights, duties, and obligations of each party are valid only in the United States except that all licenses are valid as specifically granted.

Both parties agree to the application of the laws of the State of New York to govern, interpret, and enforce all of Customer's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

2 Warranties

21 The IBM Warranties

2.1.1 Warranty for IBM Machines

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine is a fixed period, specified in a Transaction Document. For Machines, unless otherwise specified, the Date of Installation is the Warranty Start Date.

During the warranty period, IBM provides repair and exchange Service for the IBM Machine, without charge, under the type of Service IBM designates for the IBM Machine. If an IBM Machine does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to IBM for a refund.

Additional terms regarding Service for Machines during and after the warranty period are in Part 6.

2.1.2 Warranty for ICA Programs

IBM warrants that each warranted ICA Program, when used in the Specified Operating Environment, will conform to its Specifications.

During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted ICA Program for at least one year following its general availability. The warranty period for an ICA Program expires when its Program Services are no longer available.

If an ICA Program does not function as warranted during the first year after Customer obtains its license and IBM is unable to make it do so, Customer may return the ICA Program and the charges Customer paid for the license will be refunded. To be eligible, Customer must have obtained its license while Program Services (regardless of the remaining duration) were available for the ICA Program. Additional terms regarding Program Services are contained in Part 5.

2.1.3 Warranty for IBM Services

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

2.1.4 Warranty for Systems

When IBM specifies in an Attachment or Transaction Document that it is providing Products to Customer that are intended to operate together as a system, IBM warrants that those Products are compatible and, when installed in accordance with their Specifications, will operate with one another. This warranty is in addition to IBM's other applicable warranties.

2.2 Extent of Warranty

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies in place of these Machine warranties.

The warranties stated above will not apply to the extent that there has been misuse (including, but not limited to, use of any Unauthorized Built-in Capacity or Circumvention of Technological Measures), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machines is voided by removal or alteration of Machine or parts identification labels.

For a Machine that IBM is responsible to install, if Customer elects to install the Machine itself or have a third party install the Machine, IBM may inspect the Machine at Customer's expense before providing warranty Service on the Machine. If the Machine is not in an acceptable condition for warranty Service, as

solely determined by IBM, Customer may request that IBM restore it to an acceptable condition for Service or Customer may withdraw its request for warranty Service. IBM, at its sole discretion, will determine if restoration is possible. Restoration is provided as a billable Service.

THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

2.2.1 Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects.

IBM will identify IBM Machines and ICA Programs that it does not warrant.

IBM's Warranty for ICA Programs does not extend to an ICA Program that is run or executed on other than a Designated Machine.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides Materials, non-IBM Products (including those provided with, or installed on, an IBM Machine at Customer's request), and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements.

3 Machines Terms

3.1 Production Status

Each IBM Machine is manufactured from parts that may or may not be new. In some cases, a Machine may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms described in Part 2 apply.

3.2 Title and Risk of Loss

When IBM accepts Customer's order, IBM agrees to sell Customer the Machine described in a Transaction Document. IBM transfers title to Customer or, if applicable, Customer's lessor when the Machine is shipped to Customer or its designated location. However, IBM reserves a purchase money security interest in the Machine until IBM receives the amounts due. For a feature, conversion, or Machine Upgrade involving the removal of parts that become IBM's property, IBM reserves a security interest until IBM receives payment of all the amounts due and the removed parts. Customer authorizes IBM to file appropriate documents to permit IBM to perfect its security interest.

For each Machine, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, Customer must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

3.3 Installation

3.3.1 Machine Installation

Customer agrees to provide an environment meeting the requirements for the Machine as specified in its published documentation.

Within 30 calendar days of the shipment of a Machine, Customer agrees to install the Machine or, if IBM is responsible for the installation, to allow IBM to install the Machine. IBM has standard installation procedures. IBM will successfully complete these procedures before it considers an IBM Machine (other than a Machine for which Customer defers installation or a Customer-set-up Machine) installed. For a Machine that IBM is responsible to install, if the Machine is not made available for IBM to install within six months from shipment, installation will be subject to an installation charge.

Customer is responsible for installing a Customer-set-up Machine and a non-IBM Machine according to instructions provided by IBM or the Machine's manufacturer.

3.3.2 Machine Upgrades and Engineering Changes

IBM sells Machine Upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Within 30 calendar days of the shipment of a Machine Upgrade, Customer agrees to install the Machine Upgrade or, if IBM is responsible for the installation, to allow IBM

to install the Machine Upgrade. Certain Machine Upgrade orders may be terminated at IBM's discretion if not made available for IBM to install within 30 calendar days of shipment, in which case Customer must return the Machine Upgrade to IBM at Customer's expense. In all cases, if the Machine Upgrade is not made available for IBM to install within six months from the date IBM ships the Machine Upgrade, installation will be subject to an installation charge.

Customer agrees to allow IBM to install mandatory Engineering Changes (such as those required for safety) on a Machine within 30 calendar days of IBM's notice to Customer unless otherwise agreed to by the parties.

Many Machine Upgrades and Engineering Changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the Machine Upgrade or Engineering Change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install Machine Upgrades and Engineering Changes and ii) transfer ownership and possession of removed parts to IBM. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance Service status of the replaced part.

4. Licenses for Machine Code and Other Internal Licensed Code

Customer acknowledges that each Covered Machine contains Machine Code and may also contain Other Internal Licensed Code. Regardless of the source from which Customer acquires an IBM Machine, IBM's license terms regarding Machine Code and Other Internal Licensed Code included with the Machine apply.

4.1 License for Machine Code

Customer's use of Machine Code on a Covered Machine is governed by the terms of the applicable IBM License Agreement for Machine Code provided at <http://www.ibm.com/systems/support/machinewarranties/machinecode.html>

4.2 License for Other Internal Licensed Code (OILC)

OILC is licensed under, and Customer's use is governed by, the terms of the applicable license agreement(s) for such OILC provided at: <http://www.ibm.com/servers/support/machinewarranties/supportbyproduct.html>

5. License for ICA Programs

5.1 License

When IBM accepts Customer's order, IBM grants Customer a nonexclusive license to use the ICA Program only within Customer's Enterprise in the United States. ICA Programs are owned by International Business Machines Corporation, one of its subsidiaries, or a third party and are copyrighted and licensed (not sold).

5.1.1 Authorized Use

Under each license, IBM authorizes Customer to:

- a. run or execute the ICA Program only on the Designated Machine specified by the Customer to IBM under the terms of Section 5.1.2 below;
- b. use the ICA Program to the extent of authorizations Customer has obtained;
- c. solely in support of the level of use authorized by IBM, make and install copies of the ICA Program on the following: (i) the Designated Machine, and (ii) on an additional Designated Machine, for backup purposes, if the ICA Program is not performing productive work (including, without limitation, production, development, test, program maintenance, mirroring, etc.) on such additional Designated Machine; provided that Customer reproduces the copyright notices and any other legends of ownership on each copy or partial copy; and
- d. use any portion of the ICA Program IBM i) provides in source form, or ii) marks restricted (for example, marked "Restricted Materials of IBM") only to:
 - (1) resolve problems related to the use of the ICA Program, and
 - (2) modify the ICA Program so that, while not otherwise violating the terms of this Agreement, it will work together with other products.

5.1.2 Customer's Additional Obligations

For each ICA Program, Customer agrees to:

- a. provide its IBM representative with the type/model and serial number of the Designated Machine, and provide advance written notice and the effective date of any change from one Designated Machine to another Designated Machine;
- b. comply with any additional or different terms in its Licensed Program Specifications or another Attachment or Transaction Document;
- c. ensure that anyone who uses it (accessed either locally or remotely) does so only for Customer's authorized use and complies with IBM's terms regarding ICA Programs; and
- d. maintain a record of all copies and provide it to IBM at its request.

5.1.3 Actions Customer May Not Take

For each ICA Program, Customer agrees not to:

- a. modify the ICA Program except as IBM expressly allows in this Agreement;
- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the ICA Program unless expressly permitted by applicable law without the possibility of contractual waiver; or
- c. sublicense, assign, rent, or lease the ICA Program or transfer it outside Customer's Enterprise.

52 Distributed System License Option

For some ICA Programs, Customer may make a copy under a Distributed System License Option (called a "DSLO" copy). IBM charges less for a DSLO copy than for the original license (called the "Basic" license). In return for the lesser charge, Customer agrees to do the following while licensed under a DSLO:

- a. have a Basic license for the ICA Program;
- b. provide problem documentation and receive Program Services (if any) only through the location of the Basic license; and
- c. distribute to, and install on, the DSLO's Designated Machine, any release, correction, or bypass that IBM provides for the Basic license.

53 Program Services

IBM provides Program Services for warranted ICA Programs. If IBM can reproduce Customer's reported problem in the Specified Operating Environment, IBM will issue defect correction information, a restriction, or a bypass. IBM provides Program Services for only the unmodified portion of a current release of an ICA Program.

IBM provides Program Services i) on an on-going basis (with at least six months' written notice before IBM terminates Program Services), ii) until the date IBM specifies, or iii) for a period IBM specifies.

5.4 License Termination

Customer may terminate the license for an ICA Program at any time on 30 calendar days' written notice to IBM.

IBM may terminate Customer's license for an ICA Program if Customer fails to comply with:

- a. the terms of this Section 5,
- b. the license terms for Machine Code applicable to the Designated Machine to which the ICA Program is licensed, or
- c. Section 1.11 of this Agreement as such Section pertains to the ICA Program or the Designated Machine to which the ICA Program is licensed.

For each ICA Program license that Customer acquired for a one-time charge, a replacement license may be acquired for an upgrade charge, if available. When Customer obtains a license for such replacement ICA Program, the license of the replaced ICA Program is terminated when charges become due, unless IBM specifies otherwise.

If an ICA Program's license is terminated, Customer's authorization to use the ICA Program is also terminated.

Customer agrees to promptly destroy all copies of the Program after either party has terminated the license.

6 Services

61 Personnel

Each party will assign personnel that are qualified to perform the tasks required of such party under this Agreement and is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.

IBM may engage subcontractors to provide or assist in providing Services, in which case IBM remains responsible for the fulfillment of its obligations under this Agreement and for the performance of the Services.

62 Materials Ownership and License

An Attachment or Transaction Document will specify Materials to be delivered to Customer and identify them as "Type I Materials," "Type II Materials," or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

Customer will own the copyright in Materials created as part of a Service that are identified as "Type I Materials" and each such Material will constitute a "work made for hire" to the extent permissible under U.S. copyright law. If any such Materials are not works made for hire under applicable law, IBM assigns the ownership of copyrights in such Materials to Customer. Customer grants IBM an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.

IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within Customer's Enterprise only) copies of Type II Materials.

IBM or its suppliers retains ownership of the copyright in any of IBM's or its suppliers' works that pre-exist or were developed outside of this Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to Customer, if any, or otherwise as Type II Materials.

Each party agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this section.

63 Customer Resources

If Customer is making available to IBM any facilities, software, hardware or other resources in connection with IBM's performance of Services, Customer agrees to obtain any licenses or approvals related to these resources that may be necessary for IBM to perform the Services and develop Materials. IBM will be relieved of its obligations that are adversely affected by Customer's failure to promptly obtain such licenses or approvals. Customer agrees to reimburse IBM for any reasonable costs and other amounts that IBM may incur from Customer's failure to obtain these licenses or approvals.

Unless otherwise agreed in an Attachment or Transaction Document, Customer is responsible for i) any data and the content of any database Customer makes available to IBM in connection with a Service under this Agreement, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data. IBM's responsibilities regarding such data or database, including any confidentiality and security obligations, are governed by the Attachments and Transaction Documents applicable to the particular Services Transaction (which prevail over the terms of any separate confidentiality agreements) and subject to the Limitation of Liability and other terms in this Agreement.

6.4 Service for Machines (during and after warranty)

6.4.1 Service for Machines

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform Customer of the available types of Service for a Machine. At its discretion, IBM will i) either repair or exchange the failing Machine and ii) provide the Service either at Customer's location or a service center. IBM manages and installs selected Engineering Changes that apply to IBM Machines and may also perform preventive maintenance.

Any feature, conversion, or Machine Upgrade IBM Services must be installed on a Machine which is i) the designated, serial-numbered Machine, if applicable, and ii) at an Engineering-Change level compatible with the feature, conversion, or Machine Upgrade.

When the type of Service requires that Customer deliver the failing Machine to IBM, Customer agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will deliver it to Customer at IBM's expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, Customer's Machine while it is i) in IBM's possession or ii) in transit in those cases where IBM is responsible for the transportation charges. Customer agrees:

- a. to obtain authorization from the owner to have IBM service a Machine that Customer does not own;
- b. where applicable, before IBM provides Service, to --
 - (1) follow the problem determination and service request procedures that IBM provides,
 - (2) secure all programs, data, and funds contained in a Machine, and
 - (3) inform IBM of changes in a Machine's location.
- c. to follow the Service instructions that IBM provides (which may include installing Machine Code and other software updates either downloaded from an IBM Internet Web site or copied from other electronic media); and
- d. when Customer returns a Machine to IBM for any reason --
 - (1) to securely erase from any Machine all programs not provided by IBM with the Machine and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data") and ii) Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
 - (2) to remove all funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that Customer returns to IBM; and
 - (3) IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

6.4.2 Replacements

When Service involves the exchange of a part or Machine, the item IBM replaces becomes IBM's property and the replacement becomes Customer's. Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a part or Machine, Customer agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. Customer also agrees to i) ensure that the part or Machine is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to IBM.

Service for some IBM Machines involves IBM providing Customer with an exchange replacement for installation by Customer. Such exchange replacements may be i) a part of a Machine (called a Customer Replaceable Unit, or "CRU," e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine. Customer may request IBM to install the replacement CRU or Machine, however, Customer may be charged for the installation. IBM provides information and replacement instructions with Customer's Machine and at any time on Customer's request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement, and Customer may be charged for the replacement if IBM does not receive the failing CRU or Machine within 15 calendar days of Customer's receipt of the replacement.

6.4.3 Items Not Covered

Repair and exchange Services do not cover:

- a. accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);
- b. Machines damaged by misuse, accident, modification, unsuitable physical or operating

- environment, or improper maintenance by Customer or a third party;
- c. Machines with removed or altered Machine or parts identification labels;
- d. failures caused by a product for which IBM is not responsible;
- e. service of Machine alterations; or
- f. service of a Machine on which Customer is using capacity or capability, other than that authorized by IBM in writing.

65 Warranty Service Upgrade

For certain Machines, Customer may select a Service upgrade from the standard type of warranty Service for the Machine. IBM charges for the Service upgrade during the warranty period.

Customer may not terminate the Service upgrade or transfer it to another Machine during the warranty period.

When the warranty period ends, the Machine will convert to maintenance Service at the same type of Service Customer selected for warranty Service upgrade.

66 Maintenance Coverage

When Customer orders maintenance Service for Machines, IBM will inform Customer of the date on which maintenance Service will begin. IBM may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, Customer may have IBM restore it for a charge or Customer may withdraw its request for maintenance Service. However, Customer will be charged for any maintenance Service that IBM has performed at Customer's request.

6.7 Automatic Service Renewal

Renewable Services renew automatically for a same length contract period unless either party provides written notification (at least one month prior to the end of the current contract period) to the other of its decision not to renew.

During an automatic renewal period, Customer may terminate the Service on one month's written notice, and IBM will provide Customer a prorated credit for any unused Services for which Customer has paid in advance.

6.8 Termination and Withdrawal of a Service

Either party may terminate a Service transaction if the other materially fails to meet its obligations concerning the Service.

Customer may terminate a Service, on notice to IBM provided Customer has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents.

For a maintenance Service, Customer may terminate without adjustment charge, provided any of the following circumstances occur:

- a. Customer permanently removes the eligible Product, for which the Service is provided, from productive use within Customer's Enterprise;
- b. the eligible location, for which the Service is provided, is no longer controlled by Customer (for example, because of sale or closing of the facility); or
- c. the Machine has been under maintenance Service for at least one year and Customer gives IBM one month's written notice prior to terminating the maintenance Service.

Customer agrees to pay IBM for i) all charges for Services IBM provides and any Products and Materials IBM delivers through Service termination, and ii) reimbursable expenses IBM incurs through Service termination. If Customer terminates without cause, Customer also agrees to pay any applicable adjustment or termination charges and for expenses IBM incurs as a result of such termination (which IBM will take reasonable steps to mitigate).

IBM may withdraw a Service or support for an eligible Product on three months' written notice to Customer. If IBM withdraws a Service for which Customer has prepaid and IBM has not yet fully provided it to Customer, IBM will give Customer a prorated refund.

Any terms that by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

This Agreement, including its applicable Attachments and Transaction Documents, is the complete agreement regarding transactions by which Customer purchases Machines, licenses ICA Programs, obtains Program licenses, and acquires Services from IBM, and replaces all prior oral or written communications, representations, understandings, warranties, promises, covenants, and commitments between Customer and IBM. In entering into this Agreement, including each Attachment and Transaction Document, neither party is relying on any representation that is not specified in this Agreement. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party accepts, on behalf of its Enterprise, the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Products and Services ordered under this Agreement are subject to it.

Agreed to:
County of Alameda, Social Services Agency

Agreed to:
International Business Machines Corporation

By Don R Edwards
Authorized signature

By Devin F. Brown
Authorized signature

Title:
Name (type or print): DON R EDWARDS

Date: 9-5-14

Customer number: 0924850

Enterprise number: 0107000

Customer address: 2000 San Pablo Avenue, 4th Floor,
Oakland, CA 94612

Title:
Name (type or print): DEVIN F. BROWN

Date: 9/5/14

Agreement number: 155492

IBM address: 2710 Gateway Oaks Drive, South
Building, Suite 200, Sacramento, CA 95833

Agreement for Exchange of Confidential Information

This Agreement for Exchange of Confidential Information (Agreement) provides protection for confidential information (Information) while maintaining each party's ability to conduct its respective business activities. Each party agrees that the following terms apply when one party (Discloser) discloses Information to the other (Recipient).

1. Disclosure

Information not marked with a restrictive legend of Discloser or disclosed orally must be identified as confidential at the time of disclosure.

Each disclosure of Information is subject to this Agreement for two years following the initial date of disclosure.

2. Obligations

Recipient agrees to use Information for the purpose for which it was disclosed or otherwise for the benefit of Discloser, and not to intentionally disclose Information other than to the following:

- a. Recipient's employees and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. Control means to own or control, directly or indirectly, over 50% of voting shares;
- b. subcontractors, financial and legal advisors, and then only to those who have a need to know; or
- c. any other party with Discloser's prior written consent.

Before disclosure to any party in (a) – (c), Recipient will have a written agreement with such party sufficient to require that party to treat Information substantially the same as described in this Agreement.

If required to disclose Information by law or court order, Recipient will endeavor to give Discloser prompt notice to allow Discloser a reasonable opportunity to obtain a protective order.

3. Disclaimers

DISCLOSER PROVIDES INFORMATION WITHOUT WARRANTIES OF ANY KIND and is not liable for any damages arising out of Recipient's use of Information disclosed under this Agreement.

This Agreement does not require either party to disclose or to receive Information, perform any work, or enter into any license, business engagement or other agreement. Neither this Agreement nor any disclosure of Information made under it grants Recipient any right or license under any trademark, copyright or patent, now or subsequently owned or controlled by Discloser. The exchange of Information under this Agreement does not create any joint or fiduciary relationship, or authorize either party to act or speak on behalf of the other.

The receipt of Information under this Agreement does not in any way preclude Recipient from:

- a. developing, manufacturing, marketing or providing to others products or services which may be competitive with products or services of Discloser;
- b. assigning its employees in any way it may choose; or
- c. entering into any business relationship with any other party or developing, manufacturing, marketing or providing products or services to others who compete with the Discloser.

Any Information regarding Discloser's future products or services is subject to change or withdrawal without notice. The development, release, and timing of any future features or functionality described for Discloser's products and services remains at Discloser's sole discretion.

Recipient may disclose, disseminate, and use Information that is already in its possession which was received by Discloser without obligation of confidentiality, developed independently, obtained from a source other than Discloser without obligation of confidentiality, publicly available when received or subsequently becomes publicly available through no fault of the Recipient, or disclosed by Discloser to another without obligation of confidentiality.

4. General

- a. **Assignment.** Neither party may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent. Any attempt to do so is void.
- b. **Termination.** Either party may terminate this Agreement by providing at least one month's written notice to the other. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.
- c. **Modification.** Only a written agreement signed by both parties can modify this Agreement.
- d. **Choice of Law.** Both parties agree to the application of the laws of the State of New York to govern, interpret, and enforce all of the parties' respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.
- e. **Import/Export Compliance.** Each party will comply with all applicable export and import laws and associated embargo and economic sanction regulations, including those of the United States, that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.

This Agreement, including its applicable supplements, is the complete agreement regarding the exchange of Information, and replaces all prior oral or written communications, representations, warranties, covenants, and commitments between Company and IBM regarding the exchange of Information. In entering into this Agreement, including each supplement, neither party is relying on any representation not specified in this Agreement or the applicable supplement. Additional or different terms in any written communication from Company are void.

Each party accepts the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this Agreement or a supplement made by reliable means is considered an original and ii) all disclosures of Information under this Agreement are subject to it.

Agreed to:

County of Alameda, Social Services Agency

By

Don R Edwards

Authorized Signature

Name (type or print): DON R EDWARDS

Date: 9-5-14

Identification number:

Address: 2000 San Pablo Avenue, 4th Floor,
Oakland, CA 94612

Agreed to:

International Business Machines Corporation ("IBM")

By

Devin F. Brown

Authorized Signature

Name (type or print): DEVIN F. BROWN

Date: 9/5/14

Agreement number:

IBM address: 2710 Gateway Oaks Dr., South Building,
Suite 200, Sacramento, CA 95833

International Passport Advantage Agreement

This IBM International Passport Advantage Agreement ("Agreement") governs transactions by which Customer acquires Eligible Products. Customer Originating Company and IBM Originating Company agree to coordinate the administration of this Agreement within their respective Enterprises. This Agreement is entered into with the understanding that both Customer Originating Company and IBM Originating Company are bound by its terms. Both Customer Originating Company and IBM Originating Company agree to distribute copies of this Agreement to their respective participating Enterprise companies. The Customer Originating Company is responsible for all Sites' compliance with the terms of this Agreement.

This Agreement, including any applicable Attachments, Terms of Use, and any Transaction Documents is the complete agreement regarding transactions by which Customer acquires Eligible Products, and replace any prior oral or written agreements, communications, representations, statements, understandings, warranties, promises, covenants, commitments, or undertakings between Customer and IBM concerning Passport Advantage.

If there is a conflict among the terms of this Agreement, Attachments, Terms of Use, and Transaction Documents, those of an Attachment prevail over those of this Agreement, those of Terms of Use prevail over those of an Attachment and this Agreement, and the terms of a Transaction Document prevail over those of this Agreement, the Terms of Use, and an Attachment.

Once this Agreement is accepted, 1) unless prohibited by applicable law or specified otherwise, any reproduction of it or a Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and 2) all Eligible Products ordered under this Agreement are subject to it.

1 General

11 Agreement Structure

This Agreement is organized in six Parts:

Part 1 – General includes terms regarding Agreement Structure, Attachments and Transaction Documents, Definitions, Acceptance of Terms, Delivery, Payment, Taxes, RSVP Level, Changes to Agreement Terms, Eligible Products, IBM Business Partners and Resellers, Intellectual Property Protection, Limitation of Liability, General Principles of Our Relationship, Agreement Termination, Compliance Verification, and Geographic Scope and Governing Law.

Part 2 – Warranties includes terms regarding Warranty for IBM Programs, Warranty for IBM Software Subscription and Support and Selected Support, Warranty for IBM Machine Components of IBM Appliances, Warranty for IBM SaaS, and Extent of Warranty.

Part 3 – Programs and Subscription and Support includes terms regarding IBM Programs, Programs in a Virtualization Environment, Fixed Term Licensing, CEO Product Categories, and Software Subscription and Support and Selected Support.

Part 4 – Appliances includes terms regarding Virtual Appliance, Appliances Comprising Both Program and Machine Components, Program Components and Machine Components.

Part 5 – IBM SaaS includes terms regarding Ownership, Customer's Right to Use, Subscription to IBM SaaS, IBM SaaS Technical Support, Content, and Termination of IBM SaaS.

Part 6 – Reserved.

12 Attachments and Transaction Documents

Additional terms for Eligible Products are in documents called "Attachments" and "Transaction Documents" provided by IBM. Depending upon their country of use, Attachments may have different names. In general, Attachments contain terms that may apply to more than one transaction, while Transaction Documents (such as a supplement, schedule, invoice, exhibit, or addendum) contain specific details and terms related to an individual transaction. Customer may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

13 Definitions

Additional Site – any Site that subsequently enrolls under this Agreement.

Anniversary – the first day of the month that follows the anniversary of the Effective Date, unless the Effective Date is the first day of a month, in which event the anniversary of the Effective Date is the Anniversary.

Appliance – an Eligible Product, designed for a particular function and not for general purpose computing tasks, that may be a Program (in the case of a “Virtual Appliance”) or composed of a Program Component, a Machine Component, and any Machine Code Component that IBM may provide to Customer.

Audit Reports – a set of reports available in the IBM License Metric Tool (“ILMT”), or by another method acceptable to IBM as specified at

<http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> . These reports provide the Processor Value Unit (“PVU”) license requirements based on the Virtualization Capacity available to the Eligible Sub-Capacity Product.

CEO User – an individual to whom a machine has been assigned that is capable of copying, using, or extending the use of Programs in a CEO Product Category.

Content – information, software, and data, including, without limitation, any Personal Data, hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets, or servlets that are created, provided, uploaded, or transferred by Customer and any user authorized by Customer.

Customer – the customer Enterprise company that is ordering Eligible Products.

Customer Originating Company – the legal entity within Customer’s Enterprise of which the entity that identifies itself as the “Originating Site” on an “IBM International Passport Advantage Enrollment Form” is a part.

Customer-set-up Machine Component – an IBM Machine Component that Customer is responsible for installing according to instructions provided with it.

Date of Installation –

- a. for a Customer-set-up Machine Component, the date on Customer’s purchase invoice or sales receipt for the Appliance is the Date of Installation, unless IBM or Customer’s IBM reseller informs Customer otherwise.
- b. for an IBM Machine Component that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;

Effective Date – the date IBM accepts Customer’s initial order for Eligible Products, either directly from Customer or from Customer’s reseller.

Eligible Operating System Technology – an operating system for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Eligible Processor Technology – a processor technology for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Eligible Products – commercially available IBM Programs, Non-IBM Programs, Selected Support, authorizations to increase Customer’s use of a Program, IBM Trade-ups, Competitive Trade-ups, Annual IBM Software Subscription and Support Renewals, IBM Software Subscription and Support Reinstatement, Annual Third Party Software Subscription and Support Renewals, Third Party Software Subscription and Support Reinstatement, Selected Support renewals, IBM SaaS, and Appliances.

Eligible Sub-Capacity Product – a Product for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Eligible Virtualization Environment – a server or a group of servers cooperating as a single computing entity that contain an Eligible Processor Technology, an Eligible Operating System Technology, and an Eligible Virtualization Technology.

Eligible Virtualization Technology – a virtualization technology for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> . An Eligible Virtualization Technology is capable of restricting processor capacity to a subset of the total physical capacity, sometimes referred to as partition, LPAR, or virtual machine.

Engineering Change – an update to modify certain aspects of the design of an installed Machine Component, including without limitation the design of a certain Machine Component part(s) or Machine Code Component.

Enterprise – any legal entity that, by more than 50%, owns, is owned by, or is under common ownership with the Originating Company.

Fixed Term – a definite period of time specified by IBM in a Transaction Document, for example, in a Program's PoE.

Full Capacity – The total number of physical processor cores activated and available for use on a server.

IBM – the IBM Enterprise company that is providing Eligible Products.

IBM Business Partner – an organization with which IBM has signed agreements to promote, market, and, in some instances, support certain Eligible Products.

IBM Machine Component – a Machine Component bearing an IBM logo.

IBM Originating Company – the legal entity within International Business Machines Corporation's Enterprise that accepts the Customer Originating Company's orders.

IBM Program – a Program acquired under this Agreement and subject to the IPLA, including its LI.

IBM Software as a Service ("IBM SaaS") – offerings IBM makes available to Customer remotely through the Internet providing access to (i) functionality of Programs, (ii) infrastructure, and (iii) technical support. IBM SaaS is not a Program but may require Customer to download enabling software in order to use it. IBM SaaS is an Eligible Product.

IBM SaaS User – one who accesses IBM SaaS using a user account identification and password associated with Customer's IBM SaaS account and provided by Customer.

IBM Software Subscription and Support – software subscription and support provided for IBM Programs licensed under the IPLA. See 3.5.1 **IBM Software Subscription and Support** for further description.

IPLA – IBM's International Program License Agreement. The IPLA is included with each IBM Program in the Program's directory, in a library identified as "License," a booklet, or on a CD. It is also available on the Internet at <http://www.ibm.com/software/sla/> and from IBM and its resellers.

License Information ("LI") – a document that provides information and any additional terms specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI can also be found in the Program's directory, by the use of a system command, or as a booklet included with the Program.

Machine Code Component – microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, diagnostics, and any other code (all subject to any exclusions in the license provided with it) delivered with an IBM Machine Component for the purpose of enabling the Machine Component's function, as stated in its Specifications.

Machine Component – a hardware device, features, conversions, Upgrades, elements, or accessories, or any combination of them. The term "Machine Component" includes an IBM Machine Component and any non-IBM Machine Component (including other equipment) that IBM may provide to Customer.

Non-IBM Program – a Program that is governed by the terms of the third party end user license agreement that accompanies it. IBM is not a party to the third party end user license agreement and assumes no obligations under it.

Originating Company – the legal entity that is authorized to execute and administer this Agreement on behalf of an Enterprise. The Originating Company need not be a "company" and may be the entire Enterprise.

Originating Site – Originating Company Site.

Personal Data – any information that can be used to identify a specific individual, such as name, email address, home address, or phone number that is provided to IBM to store, process, or transfer on Customer's behalf.

Processor Chip – Electronic circuitry containing one or more Processor Cores that plugs into a Processor Socket.

Processor Core – A physical functional unit within a computing device that interprets and executes program instructions and consists of at least one instruction control unit and one or more arithmetic and logic units. A multi-core technology allows two or more Processor Cores to be active on a single Processor Chip. A System z Integrated Facility for Linux (IFL) engine is considered a single Processor Core.

Processor Socket – Electronic circuitry that accepts a Processor Chip.

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Processor Value Unit ("PVU") – A metric used by IBM to assign a value to a Processor Core. The Processor Value Unit licensing model is described at http://www.ibm.com/software/lotus/passportadvantage/pvu_licensing_for_customers.html.

Program – the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

Program Component – an IBM Program or Non-IBM Program that is preinstalled on a Machine Component.

Proof of Entitlement ("PoE") – the document in which IBM specifies an Eligible Product's level of authorized use. This PoE, supported by Customer's matching paid invoice or receipt, is evidence of Customer's level of authorized use.

RSVP – Relationship Suggested Volume Price.

Selected Program – a Non-IBM Program or an IBM Program licensed under the terms of the IBM License Agreement for Non-Warranted Programs.

Selected Support – Support for specified Selected Programs.

Service Provider – an entity that provides information technology services for end user customers, either directly or through a reseller.

Site – any defined entity, such as a physical location or organizational unit, e.g., a department, division, subsidiary or cost center, of Customer's Enterprise and for which IBM assigns a Passport Advantage Site Number.

Specifications – information specific to a Machine Component. IBM Machine Component Specifications are in a document entitled "Official Published Specifications."

Sub-Capacity Licensing – Licensing of Eligible Sub-Capacity Products based on Virtualization Capacity.

Subscription Period – the time during which IBM SaaS is made available to Customer as specified in the applicable Transaction Document.

SVP – Suggested Volume Price.

Term – the period that begins either on the date IBM accepts Customer's initial order (in the case of the initial Term) or on the Anniversary (in the case of subsequent Terms), and ends on the day immediately prior to the next Anniversary.

Terms of Use ("ToU") – additional terms under which IBM makes IBM SaaS offerings available to Customer and viewed at <http://www.ibm.com/software/sla/sladb.nsf/sla/tou/>.

Third Party Software Subscription and Support – software subscription and support provided under the third party's terms for Non-IBM Programs. See **3.5.1 Software Subscription and Support** for further description.

Upgrade – a change to a Machine Component to modify, add, remove, enable, or disable a certain Machine Component resource or function. Each such change can be accomplished through a Machine Component conversion, or through the conversion, addition, removal, or exchange of a Machine Component's feature(s), but only to the extent announced and supported by IBM for the Machine Component.

Virtualization Capacity – the highest peak processor capacity available to an Eligible Sub-Capacity Product when deployed on an Eligible Virtualization Environment in accordance with the rules specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>.

1.4 Acceptance of Terms

The Customer Originating Company and thereafter each of its participating Enterprise companies accepts this Agreement without modification by submitting an IBM International Passport Advantage Enrollment Form to IBM or the reseller(s) from whom they have chosen to acquire Eligible Products, as applicable. This Agreement is effective on the Effective Date and remains in effect until the Customer Originating Company or the IBM Originating Company terminates it in accordance with **Section 1.15 Agreement Termination**.

An Eligible Product becomes subject to this Agreement when IBM accepts Customer's order by i) sending Customer a Transaction Document, ii) making the Program or IBM SaaS available to Customer or, when applicable, shipping the Appliance, or iii) providing the support, service, or solution.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

1.5 Delivery

Transportation charges, if applicable, will be specified in a Transaction Document. For Programs IBM provides to Customer in tangible form, IBM fulfills its shipping and delivery obligations upon delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Customer and IBM.

1.6 Payment

- a. When Customer acquires Eligible Products from a reseller, Customer pays reseller directly.
- b. When Customer acquires Eligible Products from IBM, Customer agrees to pay as IBM specifies in its invoice or equivalent document, including any late payment fee; and
- c. The amount payable for a Program license may either be a one-time charge or a charge for a Fixed Term, depending on the type of license.

1.7 Taxes

If, as a result of Customer moving, accessing, or using an Eligible Product across a border, any authority imposes a customs duty, tax, levy or fee (including withholding taxes for the import or export of any such Eligible Product), then Customer agrees that it is responsible for, and will pay, any such customs duty, tax, levy or fee. This excludes those taxes based on IBM's net income.

1.8 RSVP Level

The initial "RSVP Level" is established by the point value of the initial order. If Customer acquires additional Eligible Products during a Term, Customer may attain higher RSVP Levels. The higher RSVP Level applies only when Customer acquires additional Eligible Products after the higher level is attained, except where the point value of an individual order by itself exceeds the point requirement for a higher "SVP Level." In such case, the higher SVP Level applies to the order.

At the first and each subsequent Anniversary, the RSVP Level is set, based on the Eligible Products Customer has acquired during the previous Term. If, in a subsequent Term, the point value of the Eligible Products Customer acquires during that Term is less than the point value necessary to maintain the current RSVP Level, then at the next Anniversary the RSVP Level will be reduced to reflect the level at which Customer is currently acquiring Eligible Products but not by more than one RSVP Level.

SVP/RSVP Level Table:

SVP/RSVP Level	BL	D	E	F	G	H
Points	<500	500	1,000	2,500	5,000	10,000

1.9 Changes to Agreement Terms

IBM may change the terms of this Agreement by giving the Customer Originating Company three months' written notice by letter or e-mail. Such change applies as of the date IBM specifies in the notice. Customer agrees that Customer has consented to any such change if Customer does not notify IBM in writing prior to the effective date specified in IBM's written notice that Customer disagrees with the change.

Otherwise, for a change to be valid, both the Customer Originating Company and the IBM Originating Company must sign it. Additional or different terms in any order or written communication from Customer are void.

1.10 Eligible Products

Each orderable part number for an Eligible Product is assigned a point value, which may be zero. This point value is used to determine Customer's RSVP or a transaction's SVP, as applicable. See Section **1.8 RSVP Level** above.

IBM may add or withdraw Eligible Products or change an Eligible Product's SVP or point value at any time. If IBM withdraws an Eligible Product from marketing, Customer will no longer be able to acquire it under this Agreement.

If IBM withdraws a Program or a version of a Program from marketing, Customer may not increase its level of use, beyond the authorizations already acquired, on or after the effective date of withdrawal without IBM's prior written consent, which IBM will not unreasonably withhold.

1.11 IBM Business Partners and Resellers

In addition to acquiring Eligible Products from IBM, the Originating Site and the Additional Sites may acquire them from IBM Business Partners and resellers. Not all resellers, however, are authorized to resell all Eligible Products.

When Customer orders Eligible Products from Customer's IBM Business Partner(s) or reseller(s), IBM is not responsible for 1) their actions, 2) any additional obligations they have to Customer, or 3) any products or services that they supply to Customer under their agreements. When Customer acquires Eligible Products from an IBM Business Partner or reseller, the IBM Business Partner or reseller sets the charges and payment terms.

1.12 Intellectual Property Protection

For purposes of this Section 1.12, the term "Product" means an IBM Program, Machine Code Component, or IBM Machine Component.

1.12.1 Third Party Claims

If a third party asserts a claim against Customer that a Product infringes that party's patent or copyright, IBM will defend Customer against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved in advance by IBM, provided that Customer:

- a. promptly notifies IBM in writing of the claim;
- b. allows IBM to control, and cooperate with IBM in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with the Product's license and other terms and Customer's obligations under Remedies below.

1.12.2 Remedies

If such a claim is made or appears likely to be made, Customer agrees to permit IBM, in IBM's discretion, to: i) enable Customer to continue to use the Product; ii) modify it; or iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, Customer agrees to immediately discontinue use of the Product and return it and all copies to IBM on IBM's written request. IBM will then give Customer a credit equal to the amount Customer paid for the returned Product (if the Product is subject to Fixed Term charges, up to twelve months' charges).

1.12.3 Claims for Which IBM is Not Responsible

IBM has no obligation regarding any claim arising from or related to any of the following:

- a. anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. modification of a Product by Customer or a third party on Customer's behalf;
- c. a Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, when a claim could have been avoided or the risk of a claim reduced by using the current version or release;
- d. the combination, operation, or use of the Product with any program, hardware device, data, apparatus, method, or process;
- e. the distribution, operation, or use of the Product outside Customer's Enterprise or for the benefit of any third party; or
- f. Separately Licensed Code, if any, as identified in the LI for the Product.

The LI for the Product or other documents may permit Customer to copy, modify, or redistribute all or portions of the Product without paying additional licensing fees to IBM. The indemnification obligation under this Agreement only applies to copies of the Product provided to Customer by IBM and additional copies expressly authorized in a PoE. IBM has no obligation for claims relating to copies of the Product

neither provided by IBM nor specifically authorized by a POE, even if permitted by the LI for the Product or other documents.

This Intellectual Property Protection section states IBM's entire obligation and Customer's exclusive remedy regarding any third party intellectual property claims. This Intellectual Property section does not obligate in any manner any third-party supplier of code (including Separately Licensed Code) included with or part of the Product.

1.13 Limitation of Liability

The limitations and exclusions in this **Section 1.13 (Limitation of Liability)** apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

1.13.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Eligible Product or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of U.S. \$100,000 (or equivalent in local currency) or the charges (if the Eligible Product is IBM SaaS or is subject to Fixed Term charges, up to 12 months' charges) Customer paid for the Eligible Product that is the subject of the claim.

This limit also applies to any of IBM's Eligible Product developers and suppliers. It is the maximum for which IBM and its Eligible Product developers and suppliers are collectively responsible. Damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable are not subject to a cap on the amount of damages.

1.13.2 Items for Which IBM Is Not Liable

UNDER NO CIRCUMSTANCES IS IBM, ITS ELIGIBLE PRODUCT DEVELOPERS, OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

- a. **LOSS OF, OR DAMAGE TO, DATA;**
- b. **SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**
- c. **LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

1.14 General Principles of Our Relationship

1.14.1 Notices and Communications

To the extent permissible under applicable law, the parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

1.14.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments without obtaining Customer's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

Customer agrees that Eligible Products are for use within Customer's Enterprise only and may not be resold, rented, leased, or transferred to third parties. Any attempt to do so in violation of these provisions is void.

1.14.3 Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology products and services. IBM is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Eligible Products that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular Eligible Products under this Agreement meets

the requirements of such laws. Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate law applicable to that party.

Each party agrees to comply with all applicable export and import laws and regulations including without limitation United States embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

1.14.4 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any such claim and all respective rights related to the claim lapse.

1.14.5 Other Principles of Our Relationship

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Eligible Product under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Customer authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors, IBM Business Partners, and resellers) to store and use Customer's business contact information wherever they do business, in connection with IBM Eligible Products or in furtherance of IBM's business relationship with Customer.
- e. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except as described in section 1.12 (Intellectual Property Protection) above or permitted in Section 1.13 (Limitation of Liability) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- f. Customer is responsible for selecting the Eligible Products that meet its needs and for the results obtained from the use of the Eligible Products, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- g. Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties.
- h. Where approval, acceptance, consent, or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. Customer agrees that their use of IBM SaaS will comply with the IBM acceptable use policy at <http://www.ibm.com/services/us/imc/html/aup.html> and applicable data protection laws.
- k. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.
- l. In entering into this Agreement, including each Attachment, ToU, and Transaction Document, neither party is relying on any representation that is not specified in this Agreement, including without limitation any representations concerning: i) performance or function of any Eligible Product, other than as expressly warranted in this Agreement; ii) the experiences or recommendations of other parties; or iii) any results or savings that Customer may achieve.

1.15 Agreement Termination

The Customer Originating Company may terminate this Agreement without cause on one month's written notice.

The IBM Originating Company may terminate this Agreement on three months' written notice. If Customer acquired or renewed either IBM Software Subscription and Support for any IBM Programs or IBM SaaS prior to the notice of termination, IBM may either continue to provide IBM Software Subscription and Support to Customer for those Programs or those IBM SaaS offerings for the remainder of the current term or give Customer a prorated refund. If Customer acquired or renewed Third Party Software Subscription and Support for any Non-IBM Programs prior to the notice of termination, the third party may continue to provide Third Party Software Subscription and Support to Customer for that Non-IBM Program license for the remainder of the current term. If the third party does not do so, Customer may obtain a prorated refund.

The Customer Originating Company will be considered to have terminated this Agreement if neither it nor any of its participating Enterprise companies have placed orders for Eligible Products for 24 consecutive months nor have software subscription and support in effect.

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

Any terms of this Agreement that by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

1.16 Compliance Verification

For purposes of this **Section 1.16 (Compliance Verification)**, "Passport Advantage Terms" means 1) this Agreement and applicable Attachments, Transaction Documents, and Terms of Use provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (<http://www.ibm.com/softwarepolicies/>), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this **Section 1.16** remain in effect during the period the Eligible Product is in the possession or control of Customer, and for two years thereafter.

1.16.1 Verification Process

Customer agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Customer's use of all Eligible Products is in compliance with the Passport Advantage Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Customer is responsible for 1) ensuring that it does not exceed its authorized use, and 2) remaining in compliance with Passport Advantage Terms.

Upon reasonable notice, IBM may verify Customer's compliance with Passport Advantage Terms at all Sites and for all environments in which Customer uses (for any purpose) Eligible Products subject to Passport Advantage Terms. Such verification will be conducted in a manner that minimizes disruption to Customer's business, and may be conducted on Customer's premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

1.16.2 Resolution

IBM will notify Customer in writing if any such verification indicates that Customer has used any Eligible Product in excess of its authorized use or is otherwise not in compliance with the Passport Advantage Terms. Customer agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) software subscription and support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

1.17 Geographic Scope and Governing Law

1.17.1 Geographic Scope

The terms of this Agreement apply in countries in which 1) IBM markets its Eligible Products directly or 2) its Eligible Products have been announced as otherwise available.

1.17.2 Governing Law

The rights, duties, and obligations of each party are valid only in the country in which the transaction is performed or, if IBM agrees, the country where the Eligible Product is placed in productive use, except that all licenses are valid as specifically granted.

Both parties agree to the application of the laws of the country in which the transaction is performed to govern, interpret, and enforce all of Customer's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

2 Warranties

Unless IBM specifies otherwise, the following warranties apply only in the country of acquisition.

21 Warranty for IBM Programs

The warranty for an IBM Program is stated in its license agreement.

22 Warranty for IBM Software Subscription and Support and Selected Support

IBM warrants that it provides IBM Software Subscription and Support and Selected Support using reasonable care and skill.

23 Warranty for IBM Machine Components of IBM Appliances

IBM warrants that each IBM Machine Component is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine Component is a fixed period commencing on its Date of Installation (also called "Warranty Start Date") and specified in a Transaction Document. During the warranty period, IBM provides repair and exchange service for the IBM Machine Component, without charge, under the type of service IBM designates in a Transaction Document for the IBM Machine Component. If an IBM Machine Component does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to the party from whom Customer acquired it for a refund.

For an IBM Machine Component that IBM is responsible to install, if Customer elects to install the IBM Machine Component itself or have a third party install the IBM Machine Component, IBM may inspect the IBM Machine Component at Customer's expense before providing warranty service on the IBM Machine Component. If the IBM Machine Component is not in an acceptable condition for warranty service, as solely determined by IBM, Customer may request that IBM restore it to an acceptable condition for warranty service or Customer may withdraw its request for warranty service. IBM, at its sole discretion, will determine if restoration is possible. Restoration is provided as a billable service.

If the IBM Machine Component does not function as warranted during the warranty period, refer to the service documentation that shipped with the IBM Machine Component for support assistance and problem determination procedures.

If Customer is unable to resolve the problem with the service documentation, contact IBM or the reseller to obtain warranty service. Contact information for IBM is provided in the "Warranty Information" that ships with IBM Machine Component. If Customer does not register the IBM Machine Component with IBM, Customer may be required to present proof of purchase as evidence of Customer's entitlement to warranty service.

2.4 Warranty for IBM SaaS

The warranty for IBM SaaS is stated in the Terms of Use.

2.5 Extent of Warranty

THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, AND

FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

The warranties stated in Section 2.3 will not apply to the extent that there has been misuse (including, but not limited to, use of any Machine Component capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machine Components is voided by removal or alteration of Machine Components or parts identification labels.

Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of an Eligible Product or that IBM will correct all defects.

IBM will identify IBM Eligible Products that it does not warrant.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides non-IBM Eligible Products, **WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer.

3 Programs and Subscription and Support

To acquire additional authorizations to use Programs under this Agreement, Customer must have already acquired the Program code.

3.1 IBM Programs

IBM Programs acquired under this Agreement are governed by the terms of the IPLA.

3.1.1 Versions and Platforms:

Customer may use Programs and their associated user documentation in accordance with the terms of this Agreement in any commercially available national language version up to the level of use authorized in the PoE. Customer is authorized to use the Program(s) that Customer acquires under this Agreement on any platform or operating system for which IBM currently makes Program code available under this Agreement unless the Program is designated as platform or operating system specific at the time Customer acquired it.

3.1.2 IBM Trade-ups:

Licenses for certain Programs that replace qualifying IBM Programs may be acquired for a reduced charge. Customer agrees to terminate Customer's use of the replaced IBM Programs when Customer installs the replacement Programs.

3.1.3 Competitive Trade-ups:

Licenses for certain Programs that replace qualifying Non-IBM Programs may be acquired for a reduced charge. Customer agrees to terminate Customer's use of the replaced Non-IBM Programs when Customer installs the replacement Programs.

3.1.4 Money-back Guarantee

The IPLA's "money-back guarantee" only applies the first time Customer licenses the IBM Program. If an IBM Program license is for a Fixed Term that is subject to renewal, Customer may obtain a refund only if Customer returns the Program and its PoE within the first 30 days of its initial term. The IPLA's "money-back guarantee" does not apply to a Program Component of an Appliance.

3.1.5 Conflict between the Terms of this Agreement and those of the IPLA

If there is a conflict between the terms of this Agreement, including its Attachments and Transaction Documents and those of the IPLA, including its LI, the terms of this Agreement prevail. The IPLA and its LIs are available on the Internet at <http://www.ibm.com/software/sla>.

3.2 Programs in a Virtualization Environment

3.2.1 Authorizations

- a. A PoE must be acquired for the total number of PVUs associated with the Virtualization Capacity available to an Eligible Sub-Capacity Product.
- b. Prior to an increase in an Eligible Sub-Capacity Product's Virtualization Capacity, Customer must first acquire sufficient additional authorizations, including IBM Software Subscription and Support, if applicable, to cover that increase.

- c. IBM does not give credits or refunds for charges already due or paid if an Eligible Product's use falls below the authorized level of use.

3.2.2 IBM's Responsibilities

IBM will make available and authorize Customer to use:

- a. the ILMT at no charge, when ordered by Customer or Customer's IBM Reseller. IBM provides the ILMT to Customer for Customer's compliance with these Sub-Capacity Licensing terms; and
- b. the information center included with the ILMT to aid Customer's compliance with these Sub-Capacity Licensing terms.

Customer may make copies of the ILMT and information center for Customer's compliance with these Sub-Capacity Licensing terms.

3.2.3 Customer's Responsibilities under Sub-Capacity Licensing Terms

Customer agrees to:

- a. install and configure the most current version of ILMT in accordance with the ILMT information center, within 90 days of Customer's first Eligible Sub-Capacity Product deployment on an Eligible Virtualization Environment, to enable Customer to collect Virtualization Capacity data by Eligible Sub-Capacity Product and generate Audit Reports in accordance with these Sub-Capacity Licensing terms. Exceptions to this requirement are:

- (1) when ILMT does not yet provide support for the Eligible Virtualization Environment
- (2) if Customer's Enterprise has fewer than 1,000 employees and contractors, Customer is not a Service Provider, and Customer has not contracted with a Service Provider to manage Customer's Eligible Virtualization Environment
- (3) if the total physical capacity of Customer's Enterprise servers with an Eligible Virtualization Environment, measured on a Full Capacity basis, but licensed using sub-capacity terms is less than 1,000 PVUs.
- (4) when Customer's servers with Eligible Sub-Capacity Products are licensed to the Full Capacity of the servers

For these exceptions, use of ILMT, while recommended, is not required for Sub-Capacity Licensing. In lieu of ILMT, Customer is required to manually manage and track Customer's Eligible Virtualization Environment, and manually prepare Audit Reports documenting the Virtualization Capacity by Eligible Sub-Capacity Product for Customer's Eligible Virtualization Environment during each calendar or fiscal quarter. These Audit Reports must contain the information listed in the example Audit Report available at

<http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>. These Audit Reports must be prepared as frequently as is required to maintain a history of increases to Virtualization Capacity, but not less often than once per quarter, and must be maintained for at least two years to demonstrate ongoing compliance with these Sub-Capacity Licensing terms;

- b. promptly install new versions, releases, modifications, or code corrections ("fixes") of the ILMT that IBM makes available. Customer must subscribe to Tivoli Support notifications via <http://www.ibm.com/support/mynotifications> in order to be notified when these become available;
- c. not alter, modify, omit, delete, or otherwise misrepresent by any means, directly or indirectly, the:
 - (1) ILMT audit records;
 - (2) ILMT, except for changes provided by IBM; or
 - (3) Audit Reports that Customer submits to IBM.
- d. generate, using ILMT or manually, Audit Reports at least each calendar or fiscal quarter and retain for a period of not less than two years the Audit Reports and make these reports available to IBM upon notice as specified in Section 1.16. Failure to generate Audit Reports or make Audit Reports available to IBM will result in charging for Eligible Sub-Capacity Products under Full Capacity terms;
- e. assign a person in Customer's organization with authority to manage and promptly resolve any questions on Audit Reports or inconsistencies between Audit Report contents, license entitlement, or ILMT configuration;
- f. promptly place an order with IBM or Customer's IBM reseller if Audit Reports reflect Eligible Sub-Capacity Product use in excess of Customer's authorized level. IBM Software Subscription and

Support coverage will be determined to begin at the time Customer exceeded Customer's authorized level.

3.2.4 Additional Terms

Product deployments that are not able to meet these Sub-Capacity Licensing requirements must be licensed using Full Capacity terms.

3.3 Fixed Term Licensing

Fixed Term Licenses have a term that begins on the date that Customer's order is accepted by IBM; on the calendar day following the expiration of a prior Fixed Term; or on the calendar day following the Anniversary date, as applicable.

3.3.1 Automatic Renewal of Fixed Term Licenses

Customer may renew Customer's expiring Fixed Term License by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING FIXED TERM LICENSES ARE AUTOMATICALLY RENEWED FOR THE SAME DURATION AS THE EXPIRING TERM UNDER THE TERMS OF THIS AGREEMENT AND AT THE THEN CURRENT RENEWAL CHARGES FOR SUCH PROGRAM LICENSES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM CUSTOMER OR THROUGH CUSTOMER'S RESELLER, AS APPLICABLE, CUSTOMER'S WRITTEN NOTIFICATION THAT CUSTOMER DOES NOT WANT TO RENEW. CUSTOMER AGREES TO PAY SUCH RENEWAL CHARGES.

If Customer chooses not to renew the Fixed Term License, Customer agrees to discontinue use of the Program on the expiration date.

If, after the expiration date, Customer chooses to resume use of the Program, Customer must pay charges associated with an initial Fixed Term License rather than a Fixed Term License renewal.

3.3.2 Anniversary Coordination

For Fixed Terms of six months or more only, initial or subsequent Fixed Terms entered into on a date other than the Anniversary may be renewed at the next Anniversary for an additional period, at a prorated renewal charge, in order to extend the Fixed Term to the following Anniversary.

3.3.3 Withdrawal of Fixed Term License for a particular Program

If IBM withdraws Fixed Term licensing for a particular IBM Program, Customer understands that

- a. Customer may not renew the Fixed Term License for that IBM Program; and
- b. if Customer renewed the Fixed Term License for that IBM Program prior to the notice of withdrawal, Customer may either (a) continue to use the Program under the Fixed Term License terms until the end of the then current Fixed Term or (b) obtain a prorated refund.

3.4 CEO Product Categories

"CEO Product Categories" (groupings of Eligible Products) are acquired on a per-user basis. Customer must acquire Customer's first CEO Product Category ("Primary Product Category") for all CEO Users within Customer's Enterprise and for not less than the number of CEO Users specified in the CEO Product Categories Table at <http://www.ibm.com/software/passportadvantage>.

Customer may acquire additional CEO Product Categories if Customer meets the minimum number of CEO Users requirement specified in the CEO Product Category in the CEO Product Categories Table at <http://www.ibm.com/software/passportadvantage>. However, Customer need not acquire additional CEO Product Categories for all CEO Users within Customer's Enterprise.

A CEO User may use any or all of the Programs included in a chosen CEO Product Category. But all IBM Programs that are used for client access must be acquired from the same CEO Product Category as the server Program they access.

CEO Product Categories: Additions and Deletions

IBM may add Eligible Products to or delete Eligible Products from any CEO Product Category at any time. If IBM deletes an Eligible Product from a CEO Product Category, Customer may continue to use the deleted Eligible Product but Customer may not exceed the number of CEO Users enrolled prior to the deletion.

Increasing the number of CEO Users

In the event Customer increases the number of CEO Users, Customer must acquire an authorization to use the CEO Product Category for each new CEO User.

Decreasing the number of CEO Users

Customer will notify IBM in writing prior to Customer's next Anniversary in the event Customer's total number of CEO Users decreases. Decreases may result from a reorganization, restructuring, or sale of one or more of Customer's Sites. A reduction in the number of CEO Users of a temporary or seasonal nature does not qualify as a decrease. Following a decrease in the number of CEO Users, a lower SVP Level may result. If the level of authorized use of a CEO Product Category drops below the minimum number of CEO Users applicable to that CEO Category, Customer may not renew IBM Software Subscription and Support on a CEO Product Category basis.

3.5 Software Subscription and Support and Selected Support

3.5.1 Software Subscription and Support

- a. For purposes of this Agreement, "software subscription and support" means both IBM Software Subscription and Support and Third Party Software Subscription and Support. IBM provides IBM Software Subscription and Support with each IBM Program licensed under the IPLA. IBM Software Subscription and Support is a single offering not available as separate components. IBM does not provide IBM Software Subscription and Support for (i) Non-IBM Programs or for (ii) Programs that are licensed under the IBM License Agreement for Non-Warranted Programs (together "Selected Programs").
- b. IBM Software Subscription and Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.
- c. While IBM Software Subscription and Support is in effect for an IBM Program license:
 - (1) IBM will make available to Customer IBM Program defect corrections, restrictions, and bypasses, if any, that it develops.
 - (2) IBM will make available to Customer and authorize Customer to use the most current commercially available version, release, or update, should any be made available.
 - (3) IBM provides Customer assistance for Customer's i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions (together "Support"). Such Support for a particular version or release of an IBM Program is available only until IBM or the third party, as applicable, withdraws Support for that IBM Program's version or release. When Support is withdrawn, Customer must upgrade to a supported version or release of the IBM Program in order to continue to receive Support. The IBM "Software Support Lifecycle" policy is available at <http://www.ibm.com/software/info/supportlifecycle/>.
 - (4) IBM provides Support via electronic access and, if available, telephone, only to Customer's information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Customer's IBM support center. (This assistance is not available to Customer's end users.) IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Handbook for details at <http://www.ibm.com/software/support/>.
 - (5) IBM may request that Customer allow it to remotely access Customer's system to assist Customer in isolating the software problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.
- d. IBM Software Subscription and Support does not include assistance for 1) the design and development of applications, 2) Customer's use of IBM Programs in other than their specified operating environment or 3) failures caused by products for which IBM is not responsible under this Agreement.

FOR THE AUTHORIZED USE OF EACH IBM PROGRAM INSTALLED AND IN SERVICE AT A CUSTOMER'S SITE, CUSTOMER HAS THE OPTION TO MAINTAIN IBM SOFTWARE SUBSCRIPTION AND SUPPORT FOR EITHER (a) ALL OF THE AUTHORIZED USE OR (b) NONE OF THE AUTHORIZED USE.

THERE IS NO OPTION FOR MAINTAINING IBM SOFTWARE SUBSCRIPTION AND SUPPORT COVERAGE FOR ONLY A PORTION OF AUTHORIZED USE INSTALLED AND IN SERVICE FOR AN IBM PROGRAM AT A CUSTOMER SITE.

CUSTOMER SHALL NOT USE ANY OF THE IBM SOFTWARE SUBSCRIPTION AND SUPPORT BENEFITS SPECIFIED IN SUBSECTION C OF THIS SECTION 3.5.1, INCLUDING THE APPLICATION OR USE OF ANY FIXES, UPDATES, OR UPGRADES, FOR IBM PROGRAMS FOR WHICH CUSTOMER HAS NOT FULLY PAID IBM SOFTWARE SUBSCRIPTION AND SUPPORT. IF CUSTOMER USES ANY OF THESE BENEFITS FOR WHICH IT HAS NOT FULLY PAID, THEN CUSTOMER AGREES TO ACQUIRE IBM SOFTWARE SUBSCRIPTION AND SUPPORT REINSTATEMENT SUFFICIENT TO COVER ALL SUCH UNAUTHORIZED USE OF SUCH BENEFITS AT THEN CURRENT APPLICABLE IBM PRICES.

3.5.2 Selected Support

Selected Programs eligible for Selected Support are listed at <http://www.ibm.com/lotus/PASupportedSupportPrograms>.

Selected Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.

While Selected Support is in effect for a Selected Program:

- a. IBM will make available to Customer Selected Program defect corrections, if any, that it develops.
- b. IBM provides Customer assistance for Customer's 1) routine, short duration installation and usage (how-to) questions; and 2) code related questions. Selected Support for a particular version or release of a Program is available only until IBM withdraws Selected Support for that Program's version, release, or modification. When such Selected Support is withdrawn, Customer must upgrade to a supported version or release of the Program in order to continue to receive such support. The IBM "Software Support Lifecycle" policy does not apply to Selected Support.
- c. IBM may provide Customer with assistance in designing and developing applications based on Customer's subscription level.
- d. IBM may provide assistance via electronic access and, if available, telephone, depending on Customer's location and the subscription level Customer acquires. Such assistance is provided only to Customer's information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Customer's IBM support center. Consult the IBM Software Support Handbook for details applicable to Selected Support at <http://www.ibm.com/software/support>.
- e. IBM may request that Customer allow it to remotely access Customer's system to assist Customer in isolating the software problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.

IBM does not provide licenses under this Agreement for Selected Programs.

3.5.3 Customer Data and Databases

To assist Customer in isolating the cause of a problem with a Program under either IBM Software Subscription and Support or Selected Support, IBM may request that Customer 1) allow IBM to remotely access Customer's system or 2) send Customer information or system data to IBM. IBM uses information about errors and problems to improve its products and services, and assist with its provision of related support offerings. For these purposes, IBM may use IBM entities and subcontractors (including in one or more countries other than the one in which Customer is located), and Customer authorizes IBM to do so.

Customer remains responsible for 1) any data and the content of any database Customer makes available to IBM, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Customer will not send or provide IBM access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that IBM may incur relating to any such information mistakenly provided to IBM or the loss or disclosure of such information by IBM, including those arising out of any third party claims.

3.5.4 Automatic Annual Renewal of Software Subscription and Support and Selected Support

Customer may renew Customer's expiring software subscription and support or Selected Support by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT AND SELECTED SUPPORT ARE AUTOMATICALLY RENEWED TO THE NEXT ANNIVERSARY UNDER THE TERMS OF THIS AGREEMENT AND AT THE THEN CURRENT RENEWAL CHARGES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM CUSTOMER OR THROUGH CUSTOMER'S RESELLER, AS APPLICABLE, CUSTOMER'S WRITTEN NOTIFICATION THAT CUSTOMER DOES NOT WANT TO RENEW. CUSTOMER AGREES TO PAY SUCH RENEWAL CHARGES.

Software subscription and support or Selected Support acquired or renewed on the Anniversary is renewable for an additional term of 12 full months.

Software subscription and support or Selected Support acquired on a date other than the Anniversary is renewable at the next Anniversary for an additional term of less than 12 full months for a pro-rated charge, thereby extending the coverage to the following Anniversary.

To reinstate any expired software subscription and support coverage, Customer must acquire IBM Software Subscription and Support Reinstatement or Third Party Software Subscription and Support Reinstatement, as applicable.

3.5.5 Withdrawal of Software Subscription and Support or Selected Support for a Particular Program

If IBM or the third party, as applicable, withdraws software subscription and support or Selected Support for a particular Program, Customer understands that

- a. IBM will not make software subscription and support renewal or Selected Support renewal available for that Program; and
- b. if Customer renewed IBM Software Subscription and Support for that IBM Program license or Selected Support for a Selected Program license prior to the notice of withdrawal, IBM may either continue to provide IBM Software Subscription and Support or Selected Support to Customer for that Program license until the end of the then current term or Customer may obtain a prorated refund. If Customer renewed Third Party Software Subscription and Support for that Non-IBM Program prior to the notice, the third party may continue to provide Third Party Software Subscription and Support to Customer for that Non-IBM Program license until the end of the then current term. If the third party does not do so, Customer may obtain a prorated refund.

4 Appliances

41 Virtual Appliance

Customer is licensed to use the Program(s) pursuant to the terms of this Agreement.

4.2 Appliances Comprising Both Program and Machine Components

IBM provides Appliances comprising both Program Components and Machine Components as a single product. Customer shall not use either such component independently of the Appliance of which it is a part for any purpose.

4.3 Program Components

Customer is licensed to use the Program Component(s) pursuant to the terms of this Agreement, but only on the Machine Component supplied by IBM or an authorized reseller or any replacement of a Machine Component provided to Customer by IBM or an authorized reseller. Customer may not transfer its license to use the Program Component(s) to another Enterprise.

44 Machine Components

4.4.1 Production Status

Each IBM Machine Component is manufactured from parts that may be new or used. In some cases, an IBM Machine Component may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms described in Part 2.3 apply.

4.4.2 Title and Risk of Loss

When Customer acquires a Machine Component directly from IBM, IBM transfers title to a Machine Component to Customer or, if applicable, Customer's lessor, upon payment of all the amounts due. For a feature, conversion, or another type of upgrade acquired for a Machine Component, IBM reserves transfer of title until IBM receives payment of all the amounts due and, as applicable, all removed parts, which become IBM's property.

For each Machine Component, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine Component will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, Customer must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

4.4.3 Installation

a. Machine Component Installation

- (1) Customer agrees to provide an environment meeting the requirements for the Machine Component as specified in its published documentation.
- (2) Customer is responsible for installing a Customer-set-up Machine Component and a non-IBM Machine Component according to instructions provided by IBM or the Machine Component's manufacturer.
- (3) For a Machine Component that IBM is responsible for installing, IBM has standard installation procedures. IBM will successfully complete these procedures before it considers a Machine Component (other than a Machine Component for which Customer defers installation or a Customer-set-up Machine Component) installed. For an IBM Machine Component that IBM is responsible to install, if the IBM Machine Component is not made available for IBM to install within six months from shipment, installation will be subject to an installation charge.

b. Upgrades and Engineering Changes

- (1) IBM sells Upgrades for installation on Machine Components, and, in certain instances, only for installation on a designated, serial-numbered Machine Component. Within 30 days of the shipment of an Upgrade, Customer agrees to install the Upgrade or, if IBM is responsible for the installation, to allow IBM to install the Upgrade. Certain Upgrade orders may be terminated at IBM's discretion if not made available for IBM to install within 30 days of shipment, in which case Customer must return the Upgrade at Customer's expense. In all cases, if the Upgrade is not made available for IBM to install within six months from the date IBM ships the Upgrade, installation will be subject to an installation charge.
- (2) Customer agrees to allow IBM to install mandatory Engineering Changes (such as those required for safety) on a Machine Component within 30 days of IBM's notice to Customer unless otherwise agreed to by the parties.

Many Upgrades and Engineering Changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the Upgrade or Engineering Change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install Upgrades and Engineering Changes and ii) transfer ownership and possession of removed parts to IBM. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance service status of the replaced part.

4.4.4 Machine Code Component

A Machine Code Component is licensed under the terms and restrictions of the Machine Code license agreement (e.g., IBM License Agreement for Machine Code, IBM Agreement for Licensed Internal Code, or an equivalent) provided with the Machine Code Component. Customer acceptance of the terms of this Agreement includes acceptance of IBM's Machine Code license agreements, current versions of which are available at the following URL:

http://www.ibm.com/servers/support/machine_warranties/support_by_product.html or by contacting an IBM representative. Machine Code license agreements may be amended by IBM from time to time. Such amended license terms will apply only to Machine Code Component that is supplied after such amended terms become effective.

A Machine Code Component is licensed only for use to enable a Machine Component to function in accordance with its Specifications and only for the capacity and capability for which Customer has acquired IBM's written authorization. Customer agrees to use the Machine Code Component only as specified in this Agreement and as may be further authorized or restricted in its applicable license agreement. Without limiting additional restrictions in the applicable license, Customer may not

- a. otherwise copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) the Machine Code Component, except as IBM may authorize in the Machine Component's user documentation or in writing to Customer;
- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the Machine Code Component unless expressly permitted by applicable law without the possibility of contractual waiver;
- c. sublicense or assign the license for the Machine Code Component; or
- d. lease the Machine Code Component or any copy of it.

International Business Machines Corporation, one of its subsidiaries, or a third party owns the Machine Code Component including all copyrights in the Machine Code Component and all copies of the Machine Code Component (this includes the original Machine Code Component, copies of the original Machine Code Component, and copies made from copies). The Machine Code Component is copyrighted and licensed (not sold).

Title will not be transferred when IBM supplies features, conversions, or upgrades that consist solely of Machine Code Component.

The capacity of certain Machine Components may be limited by technological measures in the Machine Code Component. Customer agrees to IBM's implementation of such technological measures to limit Machine Component capacity.

4.4.5 Delivery

Delivery dates for Appliances with Machine Components are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document.

5. IBM SaaS

Customer agrees that IBM is not providing it with access to the Internet in order to use IBM SaaS and that Customer remains responsible for Internet access.

Customer acknowledges that International Business Machines Corporation and its subsidiaries (1) do not control the transfer of data over telecommunications facilities, including the Internet, and (2) in a public Internet environment cannot commit to particular confidentiality obligations.

The exchange of any confidential information made under a separate, signed confidentiality agreement, pursuant to 1.14.5b of this Agreement, does not apply to Content. IBM assumes no confidentiality obligations regarding Content, notwithstanding the terms of any separate confidentiality agreement between Customer and IBM.

51 Ownership

IBM and its suppliers own IBM SaaS. Customer agrees that title to, ownership of and all rights in and to patents, copyrights, trademarks, and all other intellectual property rights in IBM SaaS, and any copy or part of IBM SaaS will remain with IBM and its suppliers. IBM may subcontract IBM SaaS, or any part of it, including technical support, to subcontractors selected by IBM.

52 Customer's Right to Use

Customer may use an IBM SaaS offering in accordance with its Terms of Use, up to the specified level of use authorized in the Proof of Entitlement, on condition that:

- a. Customer accepts the Terms of Use of the IBM SaaS offering;
- b. Customer ensures that anyone who uses the IBM SaaS offering does so only on Customer's behalf and complies with the terms of this Agreement and the applicable Terms of Use; and
- c. Customer does not

(1) use, copy, modify, or make the IBM SaaS offering available, in whole or on part, to third parties except as expressly permitted in this Agreement and the applicable Terms of Use;

- (2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the IBM SaaS offering, unless expressly permitted by applicable law without the possibility of contractual waiver;
- (3) use any of the IBM SaaS offering's components, files, modules, audio-visual content, or related licensed materials separately from that of the IBM SaaS offering;
- (4) rent, sublicense, or lease the IBM SaaS offering;
- (5) create Internet "links" to or from the IBM SaaS offering; or
- (6) "frame" or "mirror" any content forming part of an IBM SaaS offering, other than on Customer's own intranets in connection with Customer's authorized use of the IBM SaaS offering.

5.3 Subscription to IBM SaaS

5.3.1 Terms for a Specific IBM SaaS Offering

The terms of a specific IBM SaaS offering are provided in its Terms of Use and may include without limitation definitions, description of subscription and services, charge metrics, and restrictions.

5.3.2 IBM SaaS Subscription Period

An IBM SaaS Subscription Period begins on the date that IBM notifies Customer that Customer has access to the subscribed offering. The end date of a Subscription Period as specified in a Transaction Document is the last day of a month.

During an IBM SaaS Subscription Period, Customer may increase Customer's subscribed level of an IBM SaaS offering.

Customer may not decrease Customer's subscribed level of an IBM SaaS offering during a Subscription Period but may decrease in a subsequent Subscription Period.

5.3.3 IBM SaaS Subscription Period Renewal

Customer may renew an IBM SaaS offering at the end of a Subscription Period, unless otherwise specified in the offering's Terms of Use. Some IBM SaaS offerings, as specified in the IBM SaaS offering's Terms of Use or Transaction Document, automatically renew at the end of the Subscription Period unless, prior to the end of the Subscription Period, IBM receives, either directly or through Customer's reseller, as applicable, Customer's written notification not to renew.

5.4 IBM SaaS Technical Support

During an IBM SaaS Subscription Period:

- a. IBM provides assistance, as specified in the ToU, for Customer's offering-specific, task-oriented questions regarding the use of IBM SaaS; and
- b. IBM SaaS technical support is available only for the currently supported versions of IBM SaaS, client operating systems, Internet browsers, and software. IBM technical support is available during the normal business hours (published prime shift hours) of the IBM SaaS support center. Consult the Terms of Use for details applicable to a specific IBM SaaS offering.

5.5 Content

IBM provides only services for Content. IBM is not the publisher of Content transmitted within IBM SaaS.

Customer has sole responsibility for the following:

- a. ensuring the adequacy of any IBM SaaS elements to satisfy any Customer requirements;
- b. all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support;
- c. having all necessary authorizations to allow IBM and its subcontractors to host, cache, record, copy, and display Content, and Customer represents that it has and will keep in effect during its use of IBM SaaS all such authorizations and approvals necessary to grant IBM and its subcontractors these rights, and that such rights are provided at no charge to IBM. Customer retains all right, title, and interest in and to its Content; and
- d. the selection and implementation of procedures and controls regarding access, security, encryption, use, transmission, and backup and recovery of Content.

Customer grants to IBM and its subcontractors a nonexclusive, irrevocable, worldwide, royalty-free, fully-paid, transferable license to host, cache, record, copy, and display Content, solely for the purpose of making IBM SaaS available.

5.6 Termination of IBM SaaS

IBM may withdraw the IBM SaaS in its entirety on 12 months' written notice to all then current Customers by letter or e-mail.

Notwithstanding anything to the contrary in this Agreement, if IBM terminates Customer's access to the IBM SaaS due to Customer's breach of any of the applicable terms of this Agreement, IBM is not obligated to issue a refund or credit for any unused portion of IBM SaaS.

6 Reserved

The balance of the page is left intentionally blank.

International Passport Advantage Agreement

Supplement for Purchase of IBM Appliances and Appliance Services

Name and Address of Customer: Alameda County Social Services
Agency
2000 San Pablo Avenue
OAKLAND CA 94612

***Ship to Address:** 2000 San Pablo Avenue
OAKLAND CA 94612
UNITED STATES

***Installation Address:** 2000 San Pablo Avenue
OAKLAND CA 94612
UNITED STATES

IBM Passport Advantage Agreement or Passport Advantage Express ("Agreement") /Site No: 155492/3053949

Customer No: 0924850

IBM Reference Number: 16556676

Invoice to: Alameda County Social Services
Agency
2000 San Pablo Avenue
OAKLAND CA 94612

If Ship To Address or Installation Address changes prior to shipment of the Appliance, Customer is responsible for notifying IBM (If applicable)

Definition of "Quote": If you are a customer of IBM, Quote means the quote IBM provided to you. If you are buying through a Business Partner, Quote means the quote the Business Partner provided to you.

Appliance Maintenance, Warranty and Warranty Service Upgrade table

Part#	Qty	Description	Warranty Type of Svc Cust set Svc Lvl Warranty Prod Type of Maint Svc Maint Svc			Type of Maint Svc Maint Svc		
			Period for During	up During Svc Lvl	Status Maint	Lvl After	Lvl	
			Machine Warranty (Y/N)	Warrant Upgrades	Code Svc	After Warranty	Upgrades	
			Component	y		Warranty		
D14UILL	1	IBM PureApplication System W2500-64 Appliance Install Appliance + Subscription and Support 12 Months	1	5	N	1	A	1

Production Status Codes:

1. New System
2. Used System
3. Unknown Status
- *5. POC System

Consult the IBM Passport Advantage Appliance Support Handbook ("Appliance Support Handbook") for further details on Production Status

Codes at

<http://www.ibm.com/software/appliance/support>

Types of Service (during warranty), if available

1. Customer Replaceable Unit (CRU) Service
5. CRU and On-site Service
6. CRU and Courier or Depot Service
7. CRU and Customer Carry-In or Mail-In Service
8. CRU and Machine Exchange Service

Service Levels, if available

1. Next Business Day (NBD), 9X5
2. Same Business Day (SBD), 9X5
3. Same Day (SD), 24X7
4. 24X7 NBD (delivery)

Types of Maintenance Service (after warranty), if available

- A. On-Site Repair/Exchange Services, Monday through Friday (excluding holidays), 9am to 5pm, next business
 - D. On-Site Repair/Exchange Services, 7 days a week, 24 hrs/day, 4 hour response objective.
- This type of repair service includes a response objective and is not a guarantee.

International Program License Agreement

Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, CLICKING ON AN "ACCEPT" BUTTON, OR OTHERWISE USING THE PROGRAM, LICENSEE AGREES TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF LICENSEE, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND LICENSEE TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, CLICK ON AN "ACCEPT" BUTTON, OR USE THE PROGRAM; AND
- PROMPTLY RETURN THE UNUSED MEDIA, DOCUMENTATION, AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM IT WAS OBTAINED FOR A REFUND OF THE AMOUNT PAID. IF THE PROGRAM WAS DOWNLOADED, DESTROY ALL COPIES OF THE PROGRAM.

1. Definitions

"Authorized Use" – the specified level at which Licensee is authorized to execute or run the Program. That level may be measured by number of users, millions of service units ("MSUs"), Processor Value Units ("PVUs"), or other level of use specified by IBM.

"IBM" – International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") – a document that provides information and any additional terms specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI can also be found in the Program's directory, by the use of a system command, or as a booklet included with the Program.

"Program" – the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, files, and modules, 3) audio-visual content (such as images, text, recordings, or pictures), and 4) related licensed materials (such as keys and documentation).

"Proof of Entitlement" ("PoE") – evidence of Licensee's Authorized Use. The PoE is also evidence of Licensee's eligibility for warranty, future update prices, if any, and potential special or promotional opportunities. If IBM does not provide Licensee with a PoE, then IBM may accept as the PoE the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom Licensee obtained the Program, provided that it specifies the Program name and Authorized Use obtained.

"Warranty Period" – one year, starting on the date the original Licensee is granted the license.

2. Agreement Structure

This Agreement includes **Part 1 - General Terms**, the LI, and the PoE and is the complete agreement between Licensee and IBM regarding the use of the Program. It replaces any prior oral or written communications between Licensee and IBM concerning Licensee's use of the Program. The terms of Part 2 may replace or modify those of Part 1. To the extent of any conflict, the LI prevails over both Parts.

3. License Grant

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants Licensee a nonexclusive license to 1) use the Program up to the Authorized Use specified in the PoE, 2) make and install copies to support such Authorized Use, and 3) make a backup copy, all provided that

- Licensee has lawfully obtained the Program and complies with the terms of this Agreement;
- the backup copy does not execute unless the backed-up Program cannot execute;
- Licensee reproduces all copyright notices and other legends of ownership on each copy, or partial copy, of the Program;
- Licensee ensures that anyone who uses the Program (accessed either locally or remotely) 1) does so only on Licensee's behalf and 2) complies with the terms of this Agreement;
- Licensee does not 1) use, copy, modify, or distribute the Program except as expressly permitted in this Agreement; 2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the

Program, except as expressly permitted by law without the possibility of contractual waiver; 3) use any of the Program's components, files, modules, audio-visual content, or related licensed materials separately from that Program; or 4) sublicense, rent, or lease the Program; and

- f. if Licensee obtains this Program as a Supporting Program, Licensee uses this Program only to support the Principal Program and subject to any limitations in the license to the Principal Program, or, if Licensee obtains this Program as a Principal Program, Licensee uses all Supporting Programs only to support this Program, and subject to any limitations in this Agreement. For purposes of this Item "f," a "Supporting Program" is a Program that is part of another IBM Program ("Principal Program") and identified as a Supporting Program in the Principal Program's LI. (To obtain a separate license to a Supporting Program without these restrictions, Licensee should contact the party from whom Licensee obtained the Supporting Program.)

This license applies to each copy of the Program that Licensee makes.

31 Trade-ups, Updates, Fixes, and Patches

3.1.1 Trade-ups

If the Program is replaced by a trade-up Program, the replaced Program's license is promptly terminated.

3.1.2 Updates, Fixes, and Patches

When Licensee receives an update, fix, or patch to a Program, Licensee accepts any additional or different terms that are applicable to such update, fix, or patch that are specified in its LI. If no additional or different terms are provided, then the update, fix, or patch is subject solely to this Agreement. If the Program is replaced by an update, Licensee agrees to promptly discontinue use of the replaced Program.

3.2 Fixed Term Licenses

If IBM licenses the Program for a fixed term, Licensee's license is terminated at the end of the fixed term, unless Licensee and IBM agree to renew it.

3.3 Term and Termination

This Agreement is effective until terminated.

IBM may terminate Licensee's license if Licensee fails to comply with the terms of this Agreement.

If the license is terminated for any reason by either party, Licensee agrees to promptly discontinue use of and destroy all of Licensee's copies of the Program. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

4. Charges

Charges are based on Authorized Use obtained, which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If Licensee wishes to increase its Authorized Use, Licensee must notify IBM or an authorized IBM reseller in advance and pay any applicable charges.

5. Taxes

If any authority imposes on the Program a duty, tax, levy, or fee, excluding those based on IBM's net income, then Licensee agrees to pay that amount, as specified in an invoice, or supply exemption documentation. Licensee is responsible for any personal property taxes for the Program from the date that Licensee obtains it. If any authority imposes a customs duty, tax, levy, or fee for the import into or the export, transfer, access, or use of the Program outside the country in which the original Licensee was granted the license, then Licensee agrees that it is responsible for, and will pay, any amount imposed.

6. Money-back Guarantee

If Licensee is dissatisfied with the Program for any reason and is the original Licensee, Licensee may terminate the license and obtain a refund of the amount Licensee paid for the Program, provided that Licensee returns the Program and PoE to the party from whom Licensee obtained it within 30 days of the date the PoE was issued to Licensee. If the license is for a fixed term that is subject to renewal, then Licensee may obtain a refund only if the Program and its PoE are returned within the first 30 days of the initial term. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

7. Program Transfer

Licensee may transfer the Program and all of Licensee's license rights and obligations to another party only if that party agrees to the terms of this Agreement. If the license is terminated for any reason by either party, Licensee is prohibited from transferring the Program to another party. Licensee may not transfer a portion of 1) the Program or 2) the Program's Authorized Use. When Licensee transfers the Program, Licensee must also transfer a hard copy of this Agreement, including the LI and PoE. Immediately after the transfer, Licensee's license terminates.

8. Warranty and Exclusions

8.1 Limited Warranty

IBM warrants that the Program, when used in its specified operating environment, will conform to its specifications. The Program's specifications, and specified operating environment information, can be found in documentation accompanying the Program (such as a read-me file) or other information published by IBM (such as an announcement letter). Licensee agrees that such documentation and other Program content may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation.

The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program, or that IBM will correct all Program defects. Licensee is responsible for the results obtained from the use of the Program.

During the Warranty Period, IBM provides Licensee with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge.

Consult the IBM Software Support Handbook for further information at <http://www.ibm.com/software/support>.

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, Licensee may return the Program and its PoE to the party (either IBM or its reseller) from whom Licensee obtained it and receive a refund of the amount Licensee paid. After returning the Program, Licensee's license terminates. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

8.2 Exclusions

THESE WARRANTIES ARE LICENSEE'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE.

THESE WARRANTIES GIVE LICENSEE SPECIFIC LEGAL RIGHTS. LICENSEE MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

THE WARRANTIES IN THIS SECTION 8 (WARRANTY AND EXCLUSIONS) ARE PROVIDED SOLELY BY IBM. THE DISCLAIMERS IN THIS SUBSECTION 8.2 (EXCLUSIONS), HOWEVER, ALSO APPLY TO IBM'S SUPPLIERS OF THIRD PARTY CODE. THOSE SUPPLIERS PROVIDE SUCH CODE WITHOUT WARRANTIES OR CONDITION OF ANY KIND. THIS PARAGRAPH DOES NOT NULLIFY IBM'S WARRANTY OBLIGATIONS UNDER THIS AGREEMENT.

9. Licensee Data and Databases

To assist Licensee in isolating the cause of a problem with the Program, IBM may request that Licensee 1) allow IBM to remotely access Licensee's system or 2) send Licensee information or system data to IBM. However, IBM is not obligated to provide such assistance unless IBM and Licensee enter a separate written agreement under which IBM agrees to provide to Licensee that type of technical support, which is beyond IBM's warranty obligations in this Agreement. In any event, IBM uses information about errors and problems to improve its products and services, and assist with its provision of related support

offerings. For these purposes, IBM may use IBM entities and subcontractors (including in one or more countries other than the one in which Licensee is located), and Licensee authorizes IBM to do so.

Licensee remains responsible for 1) any data and the content of any database Licensee makes available to IBM, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Licensee will not send or provide IBM access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that IBM may incur relating to any such information mistakenly provided to IBM or the loss or disclosure of such information by IBM, including those arising out of any third party claims.

10. Limitation of Liability

The limitations and exclusions in this Section 10 (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

10.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Licensee is entitled to recover damages from IBM. Regardless of the basis on which Licensee is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Program or otherwise arising under this Agreement will not exceed the amount of any 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) other actual direct damages up to the charges (if the Program is subject to fixed term charges, up to twelve months' charges) Licensee paid for the Program that is the subject of the claim.

This limit also applies to any of IBM's Program developers and suppliers. It is the maximum for which IBM and its Program developers and suppliers are collectively responsible.

10.2 Items for Which IBM Is Not Liable

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

- a. **LOSS OF, OR DAMAGE TO, DATA;**
- b. **SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**
- c. **LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

11. Compliance Verification

For purposes of this Section 11 (Compliance Verification), "IPLA Program Terms" means 1) this Agreement and applicable amendments and transaction documents provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (www.ibm.com/software/policies/), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this Section 11 remain in effect during the period the Program is licensed to Licensee, and for two years thereafter.

11.1 Verification Process

Licensee agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Licensee's use of all Programs is in compliance with the IPLA Program Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Licensee is responsible for 1) ensuring that it does not exceed its Authorized Use, and 2) remaining in compliance with IPLA Program Terms.

Upon reasonable notice, IBM may verify Licensee's compliance with IPLA Program Terms at all sites and for all environments in which Licensee uses (for any purpose) Programs subject to IPLA Program Terms. Such verification will be conducted in a manner that minimizes disruption to Licensee's business, and may be conducted on Licensee's premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

11.2 Resolution

IBM will notify Licensee in writing if any such verification indicates that Licensee has used any Program in excess of its Authorized Use or is otherwise not in compliance with the IPLA Program Terms. Licensee agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

12. Third Party Notices

The Program may include third party code that IBM, not the third party, licenses to Licensee under this Agreement. Notices, if any, for the third party code ("Third Party Notices") are included for Licensee's information only. These notices can be found in the Program's NOTICES file(s). Information on how to obtain source code for certain third party code can be found in the Third Party Notices. If in the Third Party Notices IBM identifies third party code as "Modifiable Third Party Code," IBM authorizes Licensee to 1) modify the Modifiable Third Party Code and 2) reverse engineer the Program modules that directly interface with the Modifiable Third Party Code provided that it is only for the purpose of debugging Licensee's modifications to such third party code. IBM's service and support obligations, if any, apply only to the unmodified Program.

13. General

- a. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- b. For Programs IBM provides to Licensee in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Licensee and IBM.
- c. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
- d. Licensee agrees to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.
- e. Licensee authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Licensee's business contact information wherever they do business, in connection with IBM products and services, or in furtherance of IBM's business relationship with Licensee.
- f. Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement.
- g. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: 1) neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and 2) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.
- h. Neither Licensee nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
- i. No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for any third party claims against Licensee, except as permitted in Subsection 10.1 (Items for Which IBM May Be Liable) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- j. In entering into this Agreement, neither party is relying on any representation not specified in this Agreement, including but not limited to any representation concerning: 1) the performance or function of the Program, other than as expressly warranted in Section 8 (Warranty and Exclusions) above; 2) the experiences or recommendations of other parties; or 3) any results or savings that Licensee may achieve.
- k. IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Programs. IBM Business Partners remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or obligations they have to Licensee.

- l The license and intellectual property indemnification terms of Licensee's other agreements with IBM (such as the IBM Customer Agreement) do not apply to Program licenses granted under this Agreement.

14. Geographic Scope and Governing Law

14.1 Governing Law

Both parties agree to the application of the laws of the country in which Licensee obtained the Program license to govern, interpret, and enforce all of Licensee's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

14.2 Jurisdiction

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license.

International Passport Advantage Agreement

Attachment for Appliance Services

Part 1 – General Terms

The terms of this Attachment for Appliance Services ("Attachment") are in addition to those of Customer's IBM International Passport Advantage Agreement or IBM International Passport Advantage Express Agreement, as applicable, and govern the warranty and maintenance services for IBM Appliances obtained from IBM or an authorized reseller. Customer accepts the terms of this Attachment without modification by signing below. Capitalized terms not defined in this Attachment are defined in the Agreement.

1. Definitions

Customer Replaceable Unit or "CRU" – a Machine Component part that is designated as a Customer Replaceable Unit (e.g. keyboard, memory, or hard disk drive).

Miscellaneous Equipment Specification ("MES") – a change to an installed Machine Component as specified in a Transaction Document, typically (but not limited to) enhancing some or all of the resources installed as part of that Machine Component's configuration. For instance, an MES can add processing capacity or memory or both to a server, storage capacity to a disk storage device, input/output adapters to any Machine Component, and so forth. An MES can add or remove Machine Component features, or convert a Machine Component's features, model, or Machine Component type, but only to an extent specified in an announcement letter by IBM for the particular Machine Component.

Service – performance of a task, assistance, support, or access to resources (such as an information database) that IBM makes available to Customer as specified in a Transaction Document. Service acquired under this Attachment is an Eligible Product.

Specified Location – a location within Customer's Enterprise at which Services are provided as specified in a Transaction Document. All Services received in Specified Locations are subject to the terms of this Attachment.

Standard Business Days – the generally accepted days of operation per week in each country or locality, excluding local public holidays and national holidays.

Standard Business Hours – the normal business hours of a Standard Business Day.

Service Period – the period specified in a Transaction Document during which IBM provides Service under this Attachment in a specific country.

2. Attachment Structure

This Attachment includes **Part 1 - General Terms** and **Part 2 - Country-unique Terms** (if any). The terms of Part 2 may replace or modify those of Part 1.

3. Scope of Services

Service for IBM Appliances, during and after warranty, is a single offering composed of specific Services for Program Components, Machine Components, and, if available, the Machine Code Component of an IBM Appliance.

A Transaction Document, if required, will be created for each Specified Location obtaining Services under this Attachment.

If there is a conflict among the terms of a Transaction Document, this Attachment, and the Agreement, those of a Transaction Document prevail over this Attachment and those of this Attachment prevail over the Agreement.

IBM will specify the Appliance, the Services that apply to it, the Service Period, additional terms and conditions, if applicable, and the Specified Location in the Transaction Document.

Consult the IBM Passport Advantage Appliance Support Handbook ("Appliance Support Handbook") for further details on Appliance Service at: <http://www.ibm.com/software/appliance/support>.

4. IBM Responsibilities

When Customer contracts for an applicable Service at a Specified Location, IBM agrees to deliver such Service in accordance with the terms and responsibilities identified in the Service description set out in this Attachment or the applicable Transaction Document.

5 Customer Responsibilities

Customer agrees:

- a. that when an applicable Service includes IBM providing Customer with any access codes, access to electronic diagnostic tools, information databases, or other Service delivery facilities, Customer shall limit the use of these items to only those who are authorized to use them under Customer's control and only in support of Appliances and Services identified in Transaction Documents;
- b. to provide access to Customer's Appliance via modem or the Internet for remote problem diagnostics and correction. Customer is responsible for supplying the modem and telephone lines required at Customer's facility and for providing IBM temporary user access to Customer's Appliance. Customer shall ensure that these remote activities are performed under Customer's control. Customer is responsible for i) any data and the content of any database Customer makes available to IBM in connection with a Service under this Attachment, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data. Failure to provide remote access to Customer's Appliance may delay problem resolution time;
- c. to pay any communications charges associated with accessing these Services including, but not limited to, phone and Internet connection charges, unless IBM specifies otherwise in writing;
- d. that prior to making Customer's facilities, software, hardware, networks or other similar resources available to IBM, to promptly obtain any licenses or approvals necessary for IBM or its subcontractors to use, access and modify such resources to the extent necessary for IBM to perform the Services. IBM will be relieved of its obligations to perform the Services to the extent Customer's failure to promptly obtain such licenses or approvals adversely affect IBM's ability to perform its obligations. If a third party asserts a claim against IBM as a result of Customer's failure to promptly obtain these licenses or approvals, Customer agrees to reimburse IBM for any costs and damages that IBM may reasonably incur in connection with such claim;
- e. that certain Machine Component types may require the installation and use of remote connectivity tools and equipment for direct problem reporting, remote problem determination and resolution;
- f. to follow the Service instructions that IBM provides or that may be specified in the Appliance Support Handbook at: <http://www.ibm.com/software/appliance/support>. (These instructions may include directions for installing a Machine Code Component and other Program updates either downloaded from an IBM Internet Web site or copied from other electronic media in order to maintain the currency of the Appliance); and
- g. to use the information obtained under these Services, including electronic diagnostic and service delivery facilities, only for the support of the information processing requirements within Customer's Enterprise.

In addition, Customer acknowledges that IBM is permitted to use global resources (non-permanent residents used locally and personnel in locations worldwide) for the delivery of the Service.

6 Personnel

Each party shall assign personnel that are qualified to perform the tasks required of such party under this Attachment and each party is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.

IBM may engage subcontractors to provide or assist in providing Services, in which case IBM remains responsible for the fulfillment of its obligations under this Attachment and for the performance of the Services.

7. Service for IBM Appliances (during and after warranty)

7.1 Hours of Coverage

The hours of coverage for each Appliance, during which IBM will provide Services for such Appliance, are specified in the Appliance Support Handbook at: <http://www.ibm.com/software/appliance/support>

Unless otherwise specified, IBM provides the Services in each country/locality on Standard Business Days during Standard Business Hours. Additional hours of coverage options are available for some Services.

7.2 Service for IBM Machine Components (during and after warranty)

IBM provides certain types of Service to keep Machine Components in, or restore them to, conformance with their Specifications. IBM will inform Customer of the available types of Service for a Machine Component. At its discretion, IBM will i) either repair or exchange the failing Machine Component and ii) provide the Service either at Customer's location or a service center. IBM manages and installs selected Engineering Changes that apply to IBM Machine Components and may also perform preventive maintenance.

Any Upgrade IBM services must be installed on a Machine Component that is i) the designated, serial-numbered Machine Component, if applicable, and ii) at an Engineering Change level compatible with the Upgrade.

When the type of Service requires that Customer deliver the failing Machine Component to IBM, Customer agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine Component, IBM will deliver it to Customer at IBM's expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, the Machine Component while it is i) in IBM's possession or ii) in transit in those cases where IBM is responsible for the transportation charges.

Customer agrees:

- a. to obtain authorization from the owner to have IBM service a Machine Component that Customer does not own;
- b. where applicable, before IBM provides Service, to --
 - (1) follow the problem determination and service request procedures that IBM provides;
 - (2) secure all programs data, and funds contained in a Machine Component; and
 - (3) inform IBM of changes in a Machine Component's location; and
- c. when Customer returns a Machine Component to IBM for any reason --
 - (1) to securely erase from any Machine Component all data, including without limitation, the following: i) Personal Data and ii) confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
 - (2) to remove all funds from Machine Components returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine Component, or data contained in a Machine Component that Customer returns to IBM; and
 - (3) IBM may ship all or part of the Appliance to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

7.2.1 Replacements

When Service involves the exchange of a part or Machine Component, the item that IBM replaces becomes its property and the replacement becomes Customer's. Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a part or Machine Component, Customer agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. Customer also agrees to i) ensure that the part or Machine Component is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to IBM.

Service for some IBM Machine Components involves IBM providing an exchange replacement for installation by Customer. Such exchange replacements may be i) a CRU or ii) an entire Machine Component. Customer may request IBM to install the replacement CRU or Machine Component, however, Customer may be charged for the installation. IBM provides information and replacement instructions with Customer's Machine Component and at any time on Customer's request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine Component must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement, and Customer may be charged for the replacement if IBM does not receive the failing CRU or Machine Component within 15 days of Customer's receipt of the replacement.

7.2.2 Items Not Covered

Repair and exchange Services do not cover:

- a. accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);
- b. Machine Components damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or a third party;
- c. Machine Components with removed or altered Machine Component or parts identification labels;
- d. failures caused by a product for which IBM is not responsible;
- e. service of Machine Component alterations; or
- f. service of a Machine Component on which Customer is using capacity or capability, other than that authorized by IBM in writing.

7.2.3 Warranty Service Upgrade

For certain Machine Components, Customer may select a Service upgrade from the standard level of warranty Service for the Machine Component, which is specified in a Transaction Document ("Warranty Service Upgrade"), during the warranty period. IBM provides Service for Appliances as described in this Attachment but charges for the Warranty Service Upgrade. Customer may not terminate the Warranty Service Upgrade or transfer it to another Appliance during the warranty period.

When the warranty period ends, the Machine Component will convert to maintenance Service at the same level of Service, if available, that Customer selected for the Warranty Service Upgrade.

Consult the IBM Appliance Support Handbook for further details on Appliance Warranty Service Upgrade options at: <http://www.ibm.com/software/appliance/support>.

7.3 Service for Program Components (during and after warranty)

IBM provides Service for the Program Component of IBM Appliances during the warranty period as stated in the Program Component's license agreement. IBM provides additional support, both during and after warranty, for Program Components as part of and as described in the Software Subscription and Support and Selected Support section of the Agreement.

Software Subscription and Support for the Program Component of an Appliance during the warranty period begins on the Date of Installation.

7.4 Service Options (during and after warranty)

For certain IBM Appliances, Customer may select additional Service options that are specified in a Transaction Document ("Service Options"). IBM provides these additional Service Options in accordance with the Service descriptions contained in a Transaction Document. IBM provides Service for Appliances as described in this Attachment, but charges for Service Options.

Customer may not terminate the Service Option or transfer the Service Option to another Appliance during the Service Period.

Consult the IBM Appliance Support Handbook for further details on Appliance Service Options at: <http://www.ibm.com/software/appliance/support>.

8 Maintenance Service for IBM Machine Components (after warranty)

When the warranty period ends, the warranty Service for the IBM Machine Component will convert to Appliance Maintenance and Subscription and Support Service in accordance with the terms of Section 3.5.4 of the Agreement: Automatic Annual Renewal of Software Subscription and Support and Selected

Support, including any applicable Country-unique terms, except that for purposes of this Attachment, the words "and maintenance Service" are added after the words "software subscription and support".

As part of Appliance Maintenance and Subscription & Support Service, IBM provides Service for IBM Machine Components, as described in this Attachment, for those Appliances specified in a Transaction Document. This Service for IBM Machine Components also consists of:

- a. remotely assisting Customer in determining whether system problems are IBM Machine Component or Program Component related (problem determination);
- b. onsite and remote diagnostic and remedial maintenance Service in accordance with the type of Service for the IBM Machine Components of Appliances specified in a Transaction Document in order to keep the IBM Machine Components in, or restore them to, conformance with their Specifications, when applicable;
- c. if available for the IBM Machine Components of Appliances specified in a Transaction Document, installation of monitoring Programs to endeavor to:
 - (1) detect and analyze permanent errors;
 - (2) correlate temporary errors; and
 - (3) identify and report media problems.

IBM retains ownership of all such monitoring Programs. Customer is licensed to run such monitoring Programs solely as required by IBM to enable IBM to provide the Services herein;

- d. the Services of support specialists from IBM manufacturing, engineering, and development locations as deemed necessary by IBM;
- e. the planning, scheduling and installation of any standard available Engineering Changes or field change orders required to improve the serviceability, performance or safety of the IBM Eligible Machines;
- f. assisting Customer in establishing and implementing electronic support facilities; and
- g. activation, for use by IBM personnel only, of electronic facilities to remotely diagnose, apply fixes and update the IBM Machine Components of Appliances specified in a Transaction Document.

9. Warranty for Service

In addition to the warranties provided in the Agreement, IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description.

10. Appliance Maintenance and Subscription & Support Service Period and Renewal

The initial Service Period for IBM Machine Components is the warranty period specified in a Transaction Document for the IBM Machine Component of the Appliance. Warranty Services are not renewable. When Customer obtains Appliance Maintenance and Subscription and Support Service for an Appliance, the initial Service Period for the Appliance Maintenance and Subscription and Support Service will be treated as if it is a renewal of a previous Service Period for i) the IBM Machine Component of the Appliance and ii) the Software Subscription and Support for the Program Component of an Appliance.

Appliance Maintenance and Subscription and Support Service are provided at the same level of Service, if available, that Customer was entitled to during the warranty period or the same level of Service that Customer selected for a Warranty Service Upgrade. The initial Service Period for Appliance Maintenance and Subscription and Support Service begins on the day after the warranty period for the IBM Machine Component ends. The initial Service Period for Appliance Maintenance and Subscription and Support Service ends on i) the last day of the corresponding month in the following year, unless the warranty period ends on the last day of the month, in which case the Service Period ends on the last day of the month, 12 months from the date on which the warranty period ends for the Machine Component or ii) the Customer's Anniversary date, if applicable, for a Service Period of less than 12 full months for a prorated charge, thereby aligning the Service Period for Appliance Maintenance and Subscription and Support Service with the Anniversary.

Once Customer orders Appliance Maintenance and Subscription and Support Service for an Appliance, Customer may then renew Customer's expiring Appliance Maintenance and Subscription and Support Service in accordance with the terms of Section 3.5.4 of the Agreement: Automatic Annual Renewal of Software Subscription and Support and Selected Support, including any applicable Country-unique terms,

except that for purposes of Services provided pursuant to this Attachment, the words "and maintenance Service" are added after the words "software subscription and support".

11. Reinstatement of Service

To reinstate any expired Appliance Maintenance and Subscription and Support Service, Customer must acquire IBM Appliance Maintenance Reinstatement that includes IBM Software Subscription and Support Reinstatement. IBM may inspect the Appliance at Customer's expense before reinstating Appliance Maintenance and Subscription and Support Service. If the Appliance is not in an acceptable condition for maintenance Service, Customer may have IBM restore it for a charge or Customer may withdraw its request for Appliance Maintenance Reinstatement. IBM, at its sole discretion, determines if restoration is possible. Restoration is provided as a billable Service.

12. Termination and Withdrawal of a Service

If IBM withdraws Appliance Maintenance and Subscription and Support Service for a particular Appliance, Customer understands that:

- a. IBM will not make the Appliance Maintenance and Subscription and Support Service renewal available for that Appliance; and
- b. if Customer renewed Appliance Maintenance and Subscription and Support Service for the Appliance prior to the notice of withdrawal, IBM may either continue to provide Appliance Maintenance and Subscription and Support Service to Customer for that Appliance until the end of the then current Service Period or Customer may obtain a prorated refund.

Any terms that by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

Part 2 - Country-unique Terms

For transactions performed in the countries specified below, the following terms replace or modify the referenced terms in Part 1. All terms in Part 1 that are not changed by these amendments remain unchanged and in effect. This Part 2 is organized as follows:

- Europe, Middle East, and Africa country amendments to other Attachment terms.

EUROPE, MIDDLE EAST, AFRICA COUNTRY AMENDMENTS

AUSTRIA

7.2 Service for IBM Machine Components (during and after warranty)

The following is added as the second sentence in the fourth paragraph:

During the warranty period, IBM will reimburse you for the transportation charges for delivery of the failing Machine Component to IBM and will return it to you at IBM's expense.

GERMANY

7.2 Service for IBM Machine Components (during and after warranty)

The following is added as the second sentence in the fourth paragraph:

During the warranty period, IBM will reimburse you for the transportation charges for delivery of the failing Machine Component to IBM.

This Attachment for Appliance Services, the Agreement, and any of its Transaction Documents, is complete agreement between the parties regarding transactions by which Customer obtains warranty and maintenance Services for IBM Appliances and replaces all prior oral or written communications, representations, undertakings, warranties, promises, covenants, and commitments between Customer and IBM regarding Appliance Services. In entering into this Attachment, including any applicable Transaction Document, neither party is relying on any representation not specified in this Attachment, the Agreement, or a Transaction Document. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party accepts the terms of this Attachment by signing this Attachment (or another document that incorporates it by reference) by hand or, where recognized by law, electronically. Once signed, i) any reproduction of this Attachment made by reliable means (for example, electronic image, photocopy, or facsimile) is considered an original and ii) all Appliance warranty and maintenance Services obtained under this Attachment are subject to it.

Agreed to:
County of Alameda, Social Services Agency

By Don R Edwards
Customer Authorized signature

Agreed to:
International Business Machines Corporation

By Devin F. Brown
Authorized signature

Name (type or print): DON R. EDWARDS

Position (type or print): DPE

Date: 9-5-14

Agreement number / Site number: 155492-3053949

Your IBM Customer number: 0924850

Name (type or print): Devin F. Brown

Position (type or print):

Date: 9/5/14

Your address:
2000 San Pablo Avenue, 4th Floor, Oakland, CA
94612

2710 Gateway Oaks Drive,
South Building, Suite 200
Sacramento, CA 95833

Exhibit K

IBM International Passport Advantage Agreement Attachment for Government Option

These terms modify or are in addition to those of the IBM International Passport Advantage Agreement ("the Agreement").

You accept the terms of this Attachment without modification by indicating you are enrolling under the Government Option when you submit an IBM International Passport Advantage Enrollment Form to IBM or your reseller, as applicable.

To participate in the Government Option under the Agreement, you must be an agency or affiliated entity of either the U.S. Federal government or a state or local government. Under this Government Option Attachment to the Agreement, you receive special pricing due to your status as government and therefore other pricing and discounting mechanisms and procedures do not apply.

Section 5 - Relationship SVP Level of the Agreement does not apply under this Attachment.

EXHIBIT O

COUNTY OF ALAMEDA
THE IRAN CONTRACTING ACT (ICA) OF 2010
 For Procurements of \$1,000,000 or more

The California Legislature adopted the Iran Contracting Act (ICA) to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The ICA prohibits persons engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A person who "engages in investment activities in Iran" is defined in either of two ways:

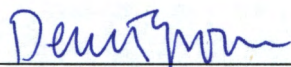
1. The person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. The person is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2201(b) as a person engaging in the investment activities described in paragraph 1 above.

By signing below, I hereby certify that as of the time of bidding or proposing for a new contract or renewal of an existing contract, neither I nor the company I own or work for are identified on the DGS list of ineligible persons and neither I nor the company I own or work for are engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

If either I or the company I own or work for are ineligible to bid or submit a proposal or to renew a contract, but I believe I or it qualifies for an exception listed in PCC § 2202(c), I have described in detail the nature of the exception: _____

CONTRACTOR NAME: International Business Machines (IBM) Corporation

PRINCIPAL: Devin F. Brown TITLE: Client Executive, CA Public Sector

SIGNATURE:  DATE: 9/5/14

C013
Add'l Copy**REQUEST TO ENCUMBER, ADD, LIQUIDATE FUNDS OR PAY CONTRACTOR****PART I: REQUEST FROM CONTRACTING DEPARTMENT**Contractor's Name: International Business Machines (IBM) Corp.

If Pay Contract-Remittance Address: _____

Contractor's Vendor ID: 13283 Master Contract #: n/a Procurement Contract #: 10789Description of Contract: PureApplication System SSIRS data warehouse upgradeProcurement Contract Begin Date: 9/23/2014 Expire Date: 9/22/2017Elation Project Info: ☐ Sub-Contractor Compliance ☐ Labor ComplianceBoard Waiver #: _____ GSA Waiver #: 3183 Federal Fund Waiver #: _____**A. ENCUMBER FUNDS IN A NEW PURCHASE ORDER**Date of Board Minute Order: 9/23/2014

File/Item/Contract Number: _____

Total Amount Authorized By Board: \$1,246,783.20Amount to be Encumbered: \$1,246,783.20

Justification if partial encumbrance requested: _____

B. ADD FUNDS TO AN EXISTING PURCHASE ORDER

PO Number: _____

Date of Board Minute Order: _____

File/Item/Contract Number: _____

Total Amount Authorized By Board: _____

Amount to be Encumbered: _____

Justification if partial encumbrance requested: _____

C. LIQUIDATE FUNDS FROM A PURCHASE ORDER

Purchase Order Number: _____

Amount to be Liquidated: _____

Liquidation Justification: _____

D. PAY CONTRACTOR - ATTACH INVOICE

PO#: _____

PO Type: _____

Business Unit: _____

Voucher #: _____

Invoice #: _____

Amount Due \$: _____

Service Period: _____

Payment Handling: ☐ US Mail☐ Return to Department☐ CBAP Payment

Pay Comments: _____

Dept Claims Processor: _____

Dept. Claims Approver: _____

Authorized signatory below certifies that contractor has provided goods/services as invoiced and verifies the mathematical accuracy of the invoice; that all financial provisions of the contract have been met (including the rates charged); that all invoiced items are specifically authorized by the contract and no contract limits have been exceeded (in total, by month or by expense category).

ACCOUNTING INFORMATION

Business Unit	Account	Fund	Dept	Program	BY	Subclass	Proj/Grant	Amount
SOCSA	610292	10000	320100	30400	2015			\$1,246,783.20
Total								\$1,246,783.20

Send Response to: Muang Saechao QIC: 20203 Phone: 267-9447Authorized Signature: _____ Department: SSA ContractsDate: 9-9-14Print Name of Authorized Signatory: Kathy Chen**PART II: RESPONSE FROM AUDITOR-CONTROLLER**☐ The Auditor-Controller encumbered _____ in a new PO. The PO Number is _____☐ The Auditor-Controller added _____ to PO Number _____☐ The Auditor-Controller liquidated _____ from PO Number _____☐ Contractor payment Approved ☐ Contractor payment Denied-Reason: _____☐ This form is being returned to you due to insufficient funds in the appropriation account.☐ The following information is needed before this request can be processed.

Signature of Contract Processor/Claims Approver _____

Date: _____

QUESTIONNAIRE FOR DETERMINING THE WITHHOLDING STATUS

INSTRUCTIONS: This questionnaire is to be completed by the County department for services contracts and must be included as part of the contract package. Be sure to answer all of the questions in Sections I and II and to complete the certifications on page 2. Sections III and IV contain supplemental questions to be answered for contractors in certain service categories.

CONTRACTOR NAME: International Business Machines (IBM) Corp DEPT #: SOCSA

TITLE/SERVICE: PureApplication Server SSIRS data warehouse upgrade

DEPT. CONTACT: Muang Saechao PHONE: 510-267-9447

I. INFORMATION ABOUT THE CONTRACTOR **YES NO**

1. Is the contractor a corporation or partnership? (X) ()
2. Does the contractor have the right per the contract to hire others to do the work agreed to in the contract? (X) ()
3. If the answer to BOTH questions is YES, provide the employer ID number here: 13-0871985
No other questions need to be answered. Withholding is not required.
4. If the answer to question 1 is NO and 2 is YES, provide the individual social security number here: _____
No other questions need to be answered. Withholding is not required.
5. If the answer to question 2 is NO, continue to Section II.

II. RELATIONSHIP OF THE PARTIES **YES NO**

1. Does the County have the right to control the way in which the work will be done, i.e., will the County be able to specify the sequence of steps or the processes to be followed if it chooses to do so? () ()
2. Is the contractor restricted from performing similar services for other businesses while he is working for the County? () ()
3. Will the contractor be working for more than 50% of the time for the County (50% = 20 hrs/wk; 80 hrs/mo)? () ()
4. Is the relationship between the County and the contractor intended to be ongoing? () ()

III. FOR CONSULTANTS, PROJECT MANAGERS, PROJECT COORDINATORS **YES NO**

1. Is the contractor being hired for a period of time rather than for a specific project? () ()
2. Will payment be based on a wage or salary (as opposed to a commission or lump sum)? () ()

IV. FOR PHYSICIANS, PSYCHIATRISTS, DENTISTS, PSYCHOLOGISTS **YES NO**

1. Will the agreement be with an individual who does not have an outside practice? () ()
2. Will the contractor work more than an average of ten hours per week?
IF THE ANSWER TO QUESTION 2 IS YES, ANSWER QUESTION 3. () ()
3. Will the County provide more than 20% of the contractor's income? () ()
4. If the answer to either question 2, or if required, question 3 is NO, the entire answer is NO.

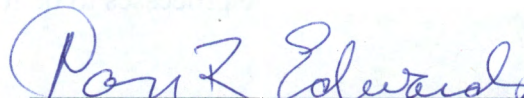
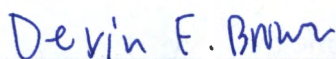
A "YES" answer to any of the questions in Section II, or, if applicable, Sections III or IV constitutes justification for paying the contractor through the payroll system as an "employee for withholding purposes."

CERTIFICATIONS:

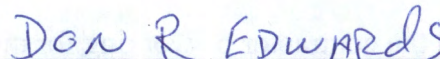
I hereby certify that the answers to the above questions accurately reflect the anticipated working relationship for this contract.



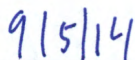
Contractor Signature

Agency/Department Head/Designee
Signature

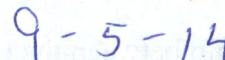
Printed Name



Printed Name



Date



Date

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of 9/23/2014, is by and between the County of Alameda, hereinafter referred to as the "County", and International Business Machines (IBM) Corporation, hereinafter referred to as the "Contractor".

WITNESSETH

Whereas, County desires to obtain Electronic Forms Solutions services which are more fully described in Exhibit A hereto; and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to County; and

Now, therefore it is agreed that County does hereby retain Contractor to provide Electronic Forms Solutions services, and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- Exhibit A Definition of Services
- Exhibit B Payment Terms
- Exhibit C Insurance Requirements
- Exhibit D Debarment and Suspension Certification
- Exhibit E Contract Compliance Reporting Requirements
- Exhibit F IBM Customer Agreement
- Exhibit G IBM Agreement for Exchange of Confidential Information
- Exhibit H IBM International Passport Advantage Agreement
- Exhibit I IBM International Passport License Agreement
- Exhibit K IBM International Passport Advantage Agreement, Attachment for Government Option

The term of this Agreement shall be from September 23, 2014 through September 22, 2015.

The compensation payable to Contractor hereunder shall not exceed *one hundred twenty-five thousand nine hundred thirty-five dollars and eighty-eight cents (\$125,935.88)* for the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF ALAMEDA

CONTRACTOR/INTERNATIONAL
BUSINESS MACHINES (IBM)
CORPORATION

By: Keith Carson
Signature

By: Devin Brown
Signature

Name: KEITH CARSON
(Printed)

Name: Devin F. Brown
(Printed)

Title: President of the Board of Supervisors

Title: Client Executive, CA Public Sector

Date: 9/5/14

Approved as to Form:

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By: Victoria Wu
Print Name VICTORIA WU
County Counsel Signature

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such amounts.

In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of County.

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the County determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, County may upon two week's notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments

2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda, its Board of

Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

3. **INSURANCE AND BOND:** Contractor shall at all times during the term of the Agreement with the County maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Contractor's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Contractor's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Contractor's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self-insurance shall be called upon to protect it as a named insured.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar

character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.

5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the Contractor nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
6. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.
 - b. **Accidents:** If a death, serious personal injury or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.
 - c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.

7. **DEBARMENT AND SUSPENSION CERTIFICATION:** (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).
 - a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
 - b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
8. **PAYMENT:** For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.
9. **TRAVEL EXPENSES:** Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.
10. **TAXES:** Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.
11. **OWNERSHIP OF DOCUMENTS:** Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the County and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, respecting in any way the subject matter of this Agreement.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In Contractor's contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the County the aforesaid assignment and license rights as to that Contractor's Documents and Materials. Contractor agrees to defend, indemnify and hold the County harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the County harmless from any claims for infringement of patent or copyright arising out of such selection. The County's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the County by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the

performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.

13. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
Social Services Agency – Contracts Office
2000 San Pablo Ave. 4th Floor
Oakland, CA 94612
Attn: Muang Saechao

To Contractor: IBM Corporation
2710 Gateway Oaks Drive
South Building, Suite 200
Sacramento, CA 95833
Attn: Devin F. Brown

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective

as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. **USE OF COUNTY PROPERTY:** Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
15. **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:** Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
 - a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by the County, Contractor shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.

16. **DRUG-FREE WORKPLACE:** Contractor and Contractor's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement
17. **AUDITS; ACCESS TO RECORDS:** The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the County, make such books and records available to the County for inspection at a location within County or Contractor shall pay to the County the reasonable, and necessary costs incurred by the County in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to County for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three (3)

years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by County), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County's last payment to Contractor under this Agreement.

19. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. **TERMINATION:** The County has and reserves the right to suspend, terminate or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its Electronic Forms Solutions Services shall not exceed \$125,935.88 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.
21. **SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION:**

Contractor has been approved by County to participate in contract without SLEB participation (*SLEB waiver no. 3185, attached*). As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the contract should change, Contractor may be required to immediately comply with the County's Small and Emerging Local Business provisions, including but not limited to:

- a. Contractor must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).
- b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- c. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the contract. Contractor shall ensure that their own certification status and/or that of

participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.

- d. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
- e. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

County will be under no obligation to pay contractor for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor- Controller's Office of Contract Compliance (OCC) located at 1221 Oak St., Rm. 249, Oakland, CA 94612 at Tel: (510) 891-5500, Fax: (510) 272-6502 or via E-mail at ACSLEBcompliance@acgov.org.

- 22. **FIRST SOURCE PROGRAM:** For contracts over \$100,000, Contractor shall provide County ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Contractor has available during the contract term before advertising to the general public.
- 23. **CHOICE OF LAW:** This Agreement shall be governed by the laws of the State of California.
- 24. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- 25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall

constitute the entire agreement between County and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

26. HEADINGS herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
27. ADVERTISING OR PUBLICITY: Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance.
28. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. ASSURANCE OF PERFORMANCE: If at any time County believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the Services as required by this Agreement, County may request from Contractor prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
30. SUBCONTRACTING/ASSIGNMENT: Contractor shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's prior written approval.

- c. Contractor shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, including, without limitation, Exhibit C. Contractor shall verify subcontractor's compliance.
 - d. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.
- 31. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.
- 32. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
- 33. **PATENT AND COPYRIGHT INDEMNITY:** Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County's prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.
 - a. If Contractor is obligated to defend County pursuant to this Section 33 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with County's defense and/or settlement of such proceeding.

- b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.
 - c. Notwithstanding this Section 33, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
34. OTHER AGENCIES: Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.
35. EXTENSION: This agreement may be extended for two additional one year terms by mutual agreement of the County and the Contractor
36. SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

[END OF GENERAL TERMS AND CONDITIONS]

ADDITIONAL PROVISIONS

1. Governing Terms

The General Terms and Conditions do not apply to this contract.

The IBM Customer Agreement, this Additional Provisions to the Standard Services Agreement, Contract No. 10790, the IBM Agreement for Exchange of Confidential Information, the IBM Passport Agreement, and other Exhibits to the preceding documents shall be the only terms governing the rights and obligations between IBM and the County.

In the event of any inconsistency among these documents, the following order of precedence shall apply:

- 1) The Additional Provisions to the Standard Services Agreement, Contract No. 10790
- 2) Exhibit A, Definition of Services
- 3) The Statement of Work, if any
- 4) Exhibit F, The IBM Customer Agreement
- 5) Exhibit G, The IBM Agreement for Exchange of Confidential Information
- 6) All other Exhibits to the Standard Services Agreement, Contract No. 10790

2. Additional Terms and Conditions to the IBM Customer Agreement ("The Agreement")

- a. INDEPENDENT CONTRACTOR: No relationship of employer and employee is created by this Agreement; it being understood and agreed that IBM is an independent Contractor. IBM is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by IBM nor for any obligations or liabilities incurred by IBM.

IBM shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

- b. INDEMNIFICATION: To the fullest extent permitted by law, IBM shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all third party claims for damages for which IBM is legally liable to that third party, and

pay all costs, damages and attorneys' fees that a court finally awards or that are included in a settlement approved by IBM, provided that such third party claim is attributable to bodily injury, sickness, disease, death or to injury to or destruction of real property or tangible personal property, (collectively Liabilities") and further provide that the County shall promptly notify IBM in writing of the claim and allow IBM to control and will cooperate with IBM in the defense and any related settlement negotiations, except where such Liabilities are caused by any indemnitee or third party. The County may participate in the defense of any such claim at its own expense without relieving IBM of any obligation hereunder.

- c. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., IBM shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.
- d. **WORKERS' COMPENSATION:** IBM shall provide Workers' Compensation insurance, as applicable, at IBM's own cost and expense and further, neither the IBM nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
- e. **PAYMENT:** For services performed in accordance with this Agreement, payment shall be made to IBM as provided in Exhibit B hereto.
- f. **TRAVEL EXPENSES:** IBM shall not be allowed paid travel expenses unless set forth in this Agreement.
- g. **TAXES:** Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the IBM.
- h. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The IBM covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. IBM represents to and agrees with the County that to the best of its knowledge and belief IBM has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited

to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County. The parties agree that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential in accordance with the Agreement for Exchange of Confidential Information incorporated herein as Exhibit G.

- i. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox.

Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
Social Services Agency
2000 San Pablo Avenue 4th Floor
Oakland, California 94612
Attn: Muang Saechao

To IBM: IBM Corporation

2710 Gateway Oaks Drive
South Building, Suite 200
Sacramento, CA 95833
Attn: Devin Brown

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

- j. **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:** IBM assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
- k. **DRUG-FREE WORKPLACE:** IBM and IBM's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither IBM nor IBM's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If IBM or any employee of IBM is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the IBM within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
- l. **AUDITS; ACCESS TO RECORDS:** The IBM shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by IBM.

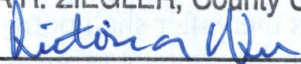
The IBM shall maintain full and adequate records in the performance of this Agreement. If such books and records are not kept and maintained by IBM within the County of Alameda, California, IBM shall, upon request of the County, make such books and records available to the County for inspection at a location within County. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the IBM shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and IBM with respect to this Agreement are closed, whichever is later. Nothing herein shall require IBM to disclosure cost, profit and overhead data, including both direct and indirect rates, markups, profit margins or confidential employee records and other trade secret information.

m. CHOICE OF LAW: This Agreement shall be governed by the laws of the State of California.

3. Exhibit E – Contract Compliance Reporting Requirements does not apply to this contract.

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By 

Print Name VICTORIA WU

County Counsel Signature: _____

OFFICE OF ACQUISITION POLICY (OAP) *ml*

3185 ✓

JUL 8 3 1950

REQUEST FOR AUTHORIZATION TO WAIVE SLEB PROGRAM REQUIREMENTS*

For ALL Requests over \$3,000: Complete 1-9 & 10 below (First Source) if over \$100,000, sign and print your name on line 11, submit hard copy with supporting documentation for approval to GSA-OAP Business Outreach Officer, QIC 26021 AND email soft copy (PDF or Word) to nakia.neal@acgov.org. Upon approval, the procurement will be processed by GSA Purchasing.

For Requests over \$25,000, a SLEB Waiver Number will be issued. This number is required to enter a Procurement Contract in ALCOLINK. OAP will email signed approvals (as appropriate, with Waiver Number) and denials to Requesting Departments, GSA Purchasing and Auditor Controller Office of Contract Compliance (OCC).

1. Please check appropriate box and complete department/contact information below.

☒ Requesting Department ☐ GSA Purchasing managing the competitive process
Department: AAF Contact: Jerome Graham Email: jgraham@acgov.org Telephone #: 510.645.9358

2. Recommended Non-SLEB Vendor (Name): International Business Machines Corporation

Street Address: PO Box 643600 City, State & Zip: Pittsburgh, PA 15264-3600

3. Total Contract Value: \$125,930.00 Contract Term Start Date: 7/23/14 End Date: 7/23/15 One-Time Purchase ☐

4. Procurement Type (check all appropriate boxes below):

☒ New Contract ☐ Renewal Contract ☐ Contract Amendment-Term ☐ Contract Amendment-Value ☐ Other: _____

5. Goods/Services Procurement Description: E-forms Software System and Services to install application and create eForms templates for SSIRS Data Warehouse

6. Brief explanation of why goods/services are required: The E-forms Software System and Services will allow SSA to leverage our existing Business Intelligence Data Warehouse to autopopulate electronic form clients will use to enroll and renew their Welfare benefits.

7. Date Goods/Services Needed: 7/23/14

a. What are the consequences if the date goods/services needed is not met? Social Services will not retain the discount on the purchase price, and will not be able to have clients enroll and renew their Welfare benefits electronically.

8. Explanation of why the non-SLEB contractor/subcontractor (in #2 above) is being recommended and why they are unable to subcontract with a SLEB(s) for a minimum of 20%: Proprietary software being used is the same as what the system was implemented

9. Explain what attempts were made to locate a SLEB prime or subcontractor(s), including:

- a. ☐ Copies of bids received and/or detailed statement of efforts made to contact and negotiate with certified businesses, including list of SLEBs contacted, names of individuals, addresses, phone numbers, dates contacted and bid prices attached
- b. List of items or selected portions of work proposed to be performed by certified business in order to increase the likelihood of achieving the stated goal: _____
- c. Description of information provided to certified contractors/subcontractors regarding the plans, specifications and anticipated time schedule for portions of the work to be performed: _____

10. If the contract is over \$100,000, is the recommended vendor able to comply with the First Source Program?

Yes: ☐ No: ☐ If No, explain: n/a

11. Department Certification: I certify to the accuracy of the preceding statements,

Signature of Agency/Department Head or Designee or GSA Purchasing Manager (if GSA Purchasing managed the process)

Print Name

Date

OAP to complete below:

A. Request Approved: ☒ Waiver Valid Through 9/22/15

SLEB Waiver Number:

3185

Reason: Sole Source

B. Request Denied: ☐

Reason: _____

Approved by GSA-Office of Acquisition Policy (Required)

Date

*Procurements using Federal grant funds that prohibit geographical preferences require the Federal Grant Funds SLEB Waiver Request form to be completed and submitted for approval to the Auditor-Controller OCC prior to soliciting bids/proposals and awarding contracts. See the Waiver Request Procedure for Federal Grant Funds Procurements in UPM (in the online County Document Center) for further information or contact the OCC at (510) 891-5500.

EXHIBIT A

DEFINITION OF SERVICES

1. Contractor shall provide Electronic Forms Solutions with the specific requirements and deliverables set forth on this Exhibit A.

A. The Contractor's proposal may be relied upon to interpret this Contract and shall be applied in such a manner so that the obligations of the Contractor are to provide the County with the broadest scope of services for the best value.

2. Activities

A. Activity One – Quickstart

Overview

During this activity, IBM will build the E-Forms infrastructure, confirm initial requirements for the forms application, and provide knowledge transfer to the technical resources.

Detail

During this activity, IBM will perform the following tasks:

- i. Build the IBM Forms infrastructure
- ii. Validate the hardware and software requirements have been met
 - a. Validate installation prerequisites (access control, install media)
 - b. Install and configure IBM Forms in Development environment (single node)
 - c. Install and configure IBM Forms in Production environment (single node)
 - d. Validate installation
- iii. Confirm initial requirements for forms application
 - a. Review forms to be converted
 - b. Identify validation rules
 - c. Identify data pre-population requirements
 - d. Identify external system integration requirements
 - e. Identify field types
 - f. Discuss authorization and authentication requirements
 - g. Discuss form selection and delivery mechanism
 - h. Discuss form save functionality
 - i. Discuss form submission functionality
 - j. Discuss form retrieval functionality
- iv. Provide knowledge transfer
 - a. Review location of on-line documentation

- b. Provide overview of system architecture
- c. Provide admin credentials for IBM Forms servers
- d. Review location of key admin tools and log files
- e. Provide overview of Forms Designer
- f. Demonstrate form conversion capabilities
- g. Provide best practices for forms-related servlet functionality

Completion Criteria

This activity will be considered complete when the following items are met:

- v. The IBM E-Forms environments have been built and validated
- vi. The available hours have been consumed

B. Activity Two – Forms Development Assistance

Overview

During this activity, IBM will assist with the conversion of existing forms to IBM E-Forms and development of required forms processing functionality.

Detail

During this activity, IBM will provide up to 80 hours to assist with the following tasks:

- i. Assist with conversion of existing forms (up to 5 forms is reasonable to complete in 40-60 hours)
 - a. Use IBM Forms Designer to convert PDF files of existing forms
 - b. Adjust form layouts
 - c. Adjust field types
 - d. Add required business logic
 - e. Add validation rules
 - f. Add data pre-population logic
- ii. Assist with development of required forms processing functionality (1 or 2 servlets should be completed with the remaining hours in this activity. Additional hours will likely be required to complete all tasks listed below.)
 - a. Integration with external systems
 - b. Integration with security managers
 - c. Develop servlet for form selection and delivery
 - d. Develop servlet for form save functionality
 - e. Develop servlet for form submission functionality
 - f. Develop servlet for form retrieval functionality

Completion Criteria

This activity will be considered complete when the following items are met:

iii. The available hours have been consumed

3. Assumptions

- a. Work under the finalized SOW will be performed at the County facility, except for any project related activity which IBM determines would be best performed on IBM premises in order to complete its obligations and responsibilities under the finalized SOW.
- b. IBM will provide the Services under the finalized SOW during normal business hours, [8:30 AM to 5:15 PM Monday through Friday], except holidays. If necessary, County will provide after-hours access to County facilities to IBM personnel. Out-of-town personnel may work hours other than those defined as normal business hours to accommodate their travel schedules.
- c. IBM may complete some of the tasks set forth in the finalized SOW by utilizing IBM subcontractors. IBM shall be responsible for the work performed by its subcontractors.
- d. Estimates for the work effort in this proposal are based on information gathered to date by IBM and not from a formal, and agreed to, detailed requirements engagement. The scope and timeframes may need to be adjusted
- e. County will provide appropriate, qualified resources as called for by the proposed activities.
- f. Delays in the availability of the resources may adversely affect the project and may result in additional cost to County. All additional costs will be agreed to between Contractor and County prior to any invoice or payment for such costs.
- g. County will provide the installation, configuration or testing of any hardware or software that is not in scope for this engagement.
- h. County will identify key stakeholders and contributors prior to the project's start date that will be available for participation during the proposed engagement duration.
- i. County is responsible to secure and provide all required licensed software, including IBM software. The County before the start of the project must acquire this software.
- j. County will assign a Project Manager to coordinate the County resources to work jointly with the IBM Project Manager to accomplish the proposed activities.

- k. County will provide the IBM team with access on an as-needed basis to internal infrastructure management.
 - l. Any changes to these assumptions may impact the cost and/or schedule of this project, and are managed through Project Change Control Procedures.
 - m. County will grant free access to its sites and Internet connections.
 - n. County will provide all hardware and software required for the solution.
 - o. County will identify a Forms Administrator and Lead Forms Developer to participate in knowledge transfer sessions (can be the same person).
 - p. County will provide hardware meeting the IBM Forms system requirements.
 - q. County will download the IBM Forms installation media and have it available on the target servers or via network accessible storage.
 - r. IBM will assign a Project Manager to oversee project logistics. In addition, the IBM Resource Manager will identify and assign the appropriate consultants.
 - s. IBM will engage and deploy resources for project commencement and implementation.
4. Contractor project team will consist of the following Key Personnel as applicable during the contract term:

IBM Team/Role	Description
ISSL U.S. Engagement Manager	Oversees the engagement from a Services delivery standpoint and maintains C-level relationship with County personnel as well as chairs joint ISSL/County Steering Committee.
ISSL Practice Delivery Manager	Owns specific Services delivery engagements; oversees ISSL Project Manager efforts; maintains County sponsor-level relationships.
ISSL Sales Specialist	Owns the sales relationship and is responsible for changes to existing contract or new contracts as required.
ISSL Solution Architect	Owns the engagement technical solution; oversees activities of the Delivery Architect and technical consulting team.
IBM Support and Development	ISSL is the only organization involved with Collaboration product delivery that has a direct line to the IBM Support and Development organizations.

Contractor agrees that it shall not transfer or reassign the individuals identified above as Key Personnel or substitute subcontractors without the express written agreement of County, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make a good faith effort to present to County an individual with greater or equal qualifications as a replacement subject to County's approval, which approval shall not be unreasonably withheld.

5. The approval of County to a requested change shall not release Contractor from its obligations under this Agreement.

EXHIBIT B-1

PAYMENT TERMS

1. County will use its best efforts to make payment to Contractor upon successful completion and acceptance of the following services listed in Exhibit A within thirty (30) days upon receipt and approval of invoice.
2. Invoices will be reviewed for approval by the County. Contractor shall submit all invoices and other documents as required to:

Social Services Agency
2000 San Pablo Ave., 4th Floor
Oakland, CA 94612
Attn: Jerome Graham

3. Total payment under the terms of this Agreement will not exceed the total amount of \$125,935.88. This cost includes all taxes and all other charges.
4. Upon award of this Agreement by County, County and Contractor shall forthwith jointly create a schedule governing the timely performance of Contractor's services hereunder. The agreed upon schedule shall be incorporated into this Agreement upon its adoption by the parties and thereafter Contractor shall perform all services under this Agreement in conformance with the schedule.
5. Upon notice to proceed from County, Contractor shall perform in accordance with all terms and conditions of this Agreement and Exhibits and Attachments.

EXHIBIT B-2**PRICE SCHEDULE**

Item / Part No.	Quantity	Unit Price	Extended Amount
IBM Forms Designer Authorized User License + SW Subscription & Support 12 Months 001 D56EFLL	3	\$404.46	\$1,213.38
IBM Forms Server Classic Processor Value Unit (PVU) License + SW Subscription & Support 12 Months 002 D10XYLL	280	\$241.26	\$67,552.80
IBM Forms Viewer Authorized User License + SW Subscription & Support 12 Months 003 D56E1LL	3	\$69.90	\$209.70
Subtotal			\$68,975.88

Staff	Activities Performed	Hours	Rate	Cost
Forms Specialist	This IBM Forms expert will lead all technical tasks for the IBM team.	160	\$255.00	\$40,800.00
Project Manager	This project manager will manage the IBM team in the field and work with the County project manager to coordinate activities.	32	\$255.00	\$8,160.00
Subtotal				\$48,960.00

Expense	Cost
Travel and Living Expenses: County will only be billed actual travel and living costs	\$8,000.00
Subtotal	\$8,000.00

Combined Subtotal: \$125,935.88
 Applicable sales tax: \$0
GRAND TOTAL: \$125,935.88

EXHIBIT C

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease
D	Endorsements and Conditions: ADDITIONAL INSURED: All insurance required above with the exception of Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies shall be primary insurance to any insurance available to the Indemnified Parties and Additional Insured(s). Pursuant to the provisions of this Agreement, insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by any one of the following methods: - Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured (covered party), or at minimum named as an "Additional Insured" on the other's policies. - Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured. CANCELLATION OF INSURANCE: All required insurance shall be endorsed to provide thirty (30) days advance written notice to the County of cancellation. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent to: - SSA Contracts Office: 2000 San Pablo Ave. 4th Floor, Oakland, CA 94612 - With a copy to Risk Management Unit (125 - 12th Street, 3rd Floor, Oakland, CA 94607)	



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/10/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. New York, NY 199 Water Street New York, NY 10038-3551 USA	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: ACE American Insurance Company NAIC # 22667
INSURED International Business Machines Corp. & Any Other Subsidiary Corp. Owned or Controlled by the Insured 1 New Orchard Road Armonk, NY 10504 United States	

COVERAGES

CERTIFICATE NUMBER: 210304

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC OTHER:	X		HDO G27334556	5/21/2014	5/21/2015	EACH OCCURRENCE \$ \$5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ \$5,000,000 MED EXP (Any one person) \$ \$25,000 PERSONAL & ADV INJURY \$ \$5,000,000 GENERAL AGGREGATE \$ \$5,000,000 PRODUCTS - COMPROP AGG \$ \$5,000,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS	X		ISA H08820491	5/21/2014	5/21/2015	COMBINED SINGLE LIMIT (Ea accident) \$ \$5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	☐ UMBRELLA LIAB ☐ EXCESS LIAB DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	☐ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Please see page 2 for any additional language.

CERTIFICATE HOLDERCOUNTY OF ALAMEDA- Social Services Agency
2000 San Pablo Ave.
4th Floor
Oakland, CA 94612
United States**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVEAuthorized Representative:
Aon Risk Services Northeast, Inc.*Aon Risk Services Northeast, Inc.*



ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, Inc. New York, NY 199 Water Street New York, NY 10038-3551 USA	NAMED INSURED International Business Machines Corp. & Any Other Subsidiary Corp. Owned or Controlled by the Insured 1 New Orchard Road Armonk, NY 10504 United States
EFFECTIVE DATE: 5/21/2014	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

COUNTY OF ALAMEDA- Social Services Agency is hereby named as an additional insured on General Liability policy but only to the extent that their interest may appear.

COUNTY OF ALAMEDA- Social Services Agency , additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives are hereby named as additional insureds on Auto Liability policy but only to the extent that their interest may appear.

Project: Electronic Forms Solution Project

If there is a question regarding this certificate please contact Monica Davis
(Email: davisma@us.ibm.com Phone: 520-219-3271)

All operations incidental to the conduct of insured's business in the United States of America.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/9/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. 199 Water Street New York, NY 10038 Phone: 866.266.7475 Fax: 866.467.7847	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #:
INSURED International Business Machines Corp. 1 New Orchard Road Armonk, NY 10504 United States	INSURER(S) AFFORDING COVERAGE INSURER A: Liberty Mutual Fire Insurance Company INSURER B: LM Insurance Corp. INSURER C: National Union Fire Insurance Company of Pittsburgh, PA NAIC #

COVERAGES

CERTIFICATE NUMBER: 210290

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADOL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR ☐ GEN'L AGGREGATE LIMIT APPLIES PER. ☐ POLICY ☐ PRO-JECT ☐ LOC					EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE ☐ DEDUCTIBLE ☐ RETENTION \$					EACH OCCURRENCE AGGREGATE
A B B B C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ No	N/A	EL6-621-004158-844 (VI) WAS-62D-004158-444 (AOS) ** WAS-62D-004158-674 (MN) WCS-621-004158-154 (WI) EWS-62N-004158-694 (Excess CH) 83-159626 (Guam)	1/1/2014 1/1/2014 1/1/2014 1/1/2014 1/1/2014 1/1/2014	1/1/2015 1/1/2015 1/1/2015 1/1/2015 1/1/2015 1/1/2015
						X WC STATUS- TORY LIMITS OTH- ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

** Includes EL coverage for monopolistic states ND, PR, WA, WY

** (AOS) = All Other States

Please see page 2 for any additional language.

CERTIFICATE HOLDERCOUNTY OF ALAMEDA- Social Services Agency
2000 San Pablo Ave.
4th Floor
Oakland, CA 94612
United States**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Authorized Representative:
Aon Risk Services Northeast, Inc.

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ACORD 25 (2009/09)

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ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, Inc. 199 Water Street New York, NY 10038 Phone: 866.266.7475 Fax: 866.467.7847	NAMED INSURED International Business Machines Corp. 1 New Orchard Road Armonk, NY 10504 United States
EFFECTIVE DATE: 01/01/2014	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Project: Electronic Forms Solution Project

If there is a question regarding this certificate please contact Monica Davis
(Email: davisma@us.ibm.com Phone: 520-219-3271)

All operations incidental to the conduct of insured's business in the United States of America.

EXHIBIT D

COUNTY OF ALAMEDA

DEBARMENT AND SUSPENSION CERTIFICATION

(Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:

- **Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;**
- **Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;**
- **Does not have a proposed debarment pending; and**
- **Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.**

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR NAME: International Business Machines (IBM) Corporation

PRINCIPAL: Devin F. Brown **TITLE:** Client Executive, CA Public Sector

SIGNATURE:  **DATE:** 9/5/14

SAM Search Results
List of records matching your search for :

Search Term : international* business* machines*
Record Status: Active

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 835130485	+4:	CAGE Code: 3BXY7 DoDAAC:
Expiration Date: Jul 29, 2015	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 6710 ROCKLEDGE DRIVE		
City: BETHESDA	State/Province: MARYLAND	
ZIP Code: 20817-1834	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 119714236	+4:	CAGE Code: 15898 DoDAAC:
Expiration Date: Jul 11, 2015	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 1000 River St		
City: Essex Junction	State/Province: VERMONT	
ZIP Code: 05452-4201	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 084006741	+4:	CAGE Code: 2G381 DoDAAC:
Expiration Date: Apr 15, 2015	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 1101 Kitchawan Rd		
City: Yorktown Heights	State/Province: NEW YORK	
ZIP Code: 10598	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 183717651	+4:	CAGE Code: 15900 DoDAAC:
Expiration Date: Apr 15, 2015	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 650 HARRY RD		
City: SAN JOSE	State/Province: CALIFORNIA	
ZIP Code: 95120-6001	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 111410184	+4:	CAGE Code: 49EQ3 DoDAAC:
Expiration Date: Apr 15, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 800 N FREDERICK AVE City: GAITHERSBURG State/Province: MARYLAND ZIP Code: 20879-3326 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 790384072	+4:	CAGE Code: 1D185 DoDAAC:
Expiration Date: Apr 2, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 2070 Rte 52 City: HOPEWELL JUNCTION State/Province: NEW YORK ZIP Code: 12533-3507 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 933093676	+4:	CAGE Code: 526U1 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 6710 ROCKLEDGE DR City: BETHESDA State/Province: MARYLAND ZIP Code: 20817-1834 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 833239556	+4:	CAGE Code: 5VKA3 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 2300 DULLES STATION BLVD STE 200 City: HERNDON State/Province: VIRGINIA ZIP Code: 20171-6349 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 808190412	+4:	CAGE Code: 579A9 DoDAAC:
Expiration Date: Mar 20, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 11300 DR MARTIN LUTHER KING JR ST N STE 315 City: SAINT PETERSBURG State/Province: FLORIDA ZIP Code: 33716-2325 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 965588424	+4:	CAGE Code: 67FJ6 DoDAAC:
Expiration Date: Mar 20, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 310 STATE RTE 956 City: KEYSER State/Province: WEST VIRGINIA ZIP Code: 26726-0000 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 038253597	+4:	CAGE Code: 6E2D2 DoDAAC:
Expiration Date: Mar 20, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 299-300 LONG MEADOW RD City: STERLING FOREST State/Province: NEW YORK ZIP Code: 10979-0000 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 825382281	+4:	CAGE Code: 8W884 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 11107 Sunset Hills Rd Ste 500 City: Reston State/Province: VIRGINIA ZIP Code: 20190-5375 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 827671913	+4:	CAGE Code: 55E89 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 7095 SAMUEL MORSE DR STE 200 City: COLUMBIA State/Province: MARYLAND ZIP Code: 21046-3417 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 156472011	+4:	CAGE Code: 0K670 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 12902 FEDERAL SYSTEMS PARK DR City: FAIRFAX State/Province: VIRGINIA ZIP Code: 22033-4421 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 827822300	+4:	CAGE Code: 55P83 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 6303 BARFIELD RD City: ATLANTA State/Province: GEORGIA ZIP Code: 30328-4233 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 060790131	+4:	CAGE Code: 1VZC6 DoDAAC:
Expiration Date: Mar 18, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 8123 S HARDY DR City: TEMPE State/Province: ARIZONA ZIP Code: 85284-1106 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 078392668	+4:	CAGE Code: 3U1B1 DoDAAC:
Expiration Date: Mar 18, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 15036 CONFERENCE CENTER DR City: CHANTILLY State/Province: VIRGINIA ZIP Code: 20151-3848 Country: UNITED STATES		

SAM Search Results
List of records matching your search for :

Search Term : devin* brown*
Record Status: Active

No Search Results

EXHIBIT E

**COUNTY OF ALAMEDA
CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within 5 business days in the System, immediately enter payments made to subcontractors and ensure that subcontractors confirm they received payments within 5 business days in the System. Subcontractors shall confirm their payments received from the prime contractor within 5 business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County should schedule a representative from their office/company, along with each of their subcontractors, to attend training. The training schedule may be viewed online at http://www.elationsys.com/elationsys/support_1.htm or call Elation Systems at (925) 924-0340. A special access code will be provided to contractors and subcontractors participating in this contract awarded to allow use of the System free of charge.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.



Exhibit F

IBM Customer Agreement

This IBM Customer Agreement (called the "Agreement") governs transactions by which Customer purchases Machines, licenses ICA Programs, obtains Program licenses, and acquires Services (including, without limitation, customized development and support, business consulting, and maintenance Services) from International Business Machines Corporation ("IBM").

1. General Terms

1.1 Agreement Structure

This Agreement is organized in six Parts:

Part 1 – General Terms includes terms regarding Agreement Structure, Definitions, Acceptance of Terms, Delivery, Charges and Payment, Changes to Agreement Terms, IBM Business Partners, Intellectual Property Protection, Limitation of Liability, Compliance Verification, General Principles of Our Relationship, Agreement Termination, and Geographic Scope and Governing Law.

Part 2 – Warranties defines applicable Warranties for IBM Machines, ICA Programs, IBM Services, and Systems, and terms regarding Extent of Warranty.

Part 3 – Machines Terms includes Machine terms regarding Production Status, Title and Risk of Loss, and Installation.

Part 4 – Licenses for Machine Code and Other Internal Licensed Code includes the License for Machine Code and the License for Other Internal Licensed Code.

Part 5 – License for ICA Programs includes ICA Program terms regarding License, Distributed System License Option, Program Services, Compliance Verification, and License Termination.

Part 6 – Services Terms includes terms regarding Personnel, Materials Ownership and License, Customer Resources, Service for Machines (during and after warranty), Maintenance Coverage, Automatic Service Renewal, and Termination and Withdrawal of a Service.

1.2 Attachments and Transaction Documents

Additional terms for Products and Services are in documents called "Attachments" and "Transaction Documents" provided by IBM. In general, Attachments contain terms that may apply to more than one Product or Services transaction, while Transaction Documents (such as a statement of work, supplement, schedule, invoice, exhibit, change authorization, or addendum) contain specific details and terms related to each individual transaction. Customer may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

If there is a conflict among the terms of this Agreement, Attachments, and Transaction Documents, those of an Attachment prevail over those of this Agreement, and the terms of a Transaction Document prevail over those of both this Agreement and an Attachment.

1.3 Definitions

Authorized Built-in Capacity -- the Built-in Capacity for a Covered Machine that was Properly Acquired and Activated and is used in accordance with the AUT. For purposes of this definition, "Activated" means when IBM causes, directly or indirectly, the Authorized Built-in Capacity to be made available for Customer's use on a Covered Machine.

Authorized Use Table (AUT) -- the "IBM Authorized Use Table for Machines" that is provided at the following address: www.ibm.com/systems/support/machine_warranties/machine_code/aut.html and is in effect for a Covered Machine as of the acquisition date of the Covered Machine or, if there are one or more Machine Upgrades on the Covered Machine, then as of the acquisition date of the most recently acquired Machine Upgrade. The AUT is incorporated by reference into this Agreement.

Built-in Capacity -- the type and quantity of all resources and capabilities that IBM provides for a Machine, the access or use of which IBM has the ability to restrict by contract or Technological Measures. Built-In Capacity includes, without limitation, the type and quantity of the following: 1) processors, cores, processing capacity, processor performance setting and interactive processing capacity and capabilities; 2) memory; 3) storage; 4) cryptographic capability; 5) input/output ports, and 6) workload-specific resources and capabilities (including, for example, System z mainframe specialty processors such as

zIIPs, zAAPs and IFLs, and other limited purpose products (including "appliances"). Built-in Capacity is either Authorized Built-in Capacity or Unauthorized Built-in Capacity.

Circumvent -- to, directly or indirectly, by or through any means, alter, avoid, disrupt, subvert, go around, or otherwise interfere with.

Covered Machine -- the specific Machine (as identified by serial number or order number on a Transaction Document or other similar contract document issued by IBM) for which use of Machine Code is licensed. A Covered Machine that receives a Machine Upgrade remains a Covered Machine and a Machine that receives a Machine Upgrade becomes a Covered Machine.

Customer-set-up Machine -- an IBM Machine that Customer is responsible for installing according to instructions provided with it.

Date of Installation --

- a. for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;
- b. for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and
- c. for a Program --
 - (1) basic license, the second business day after the Program's standard transit allowance period,
 - (2) copy, the date (specified in a Transaction Document) on which IBM authorizes Customer to make a copy of the Program, and
 - (3) chargeable component (also called a feature), the date Customer uses the chargeable component or a copy. Customer agrees to notify IBM of the chargeable component's Date of Installation.

Designated Machine -- a Machine of a type specified in the Mainframe Exhibits provided at the following address: <http://www.ibm.com/systems/z/resources/swprice/reference/exhibits/hardware.html>.

Engineering Change -- an update to modify certain aspects of the design of an installed Machine, including without limitation the design of a certain Machine part or Machine Code.

Enterprise -- any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the Enterprise located in the United States.

IBM Machine -- a Machine bearing an IBM logo.

IBM Product -- an IBM Machine, ICA Program, or Other IBM Program.

ICA Program -- an IBM Program licensed under Part 5 of this Agreement.

Licensed Internal Code (called "LIC") -- another term for Machine Code commonly used for certain IBM product lines, such as for IBM System z Machines. LIC and Machine Code are interchangeable terms that have the same meaning.

Machine -- a hardware device, including its resources, capabilities, features, conversions, Machine Upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment).

Machine Code -- all of the following: (i) all code provided for an IBM Machine (including, without limitation, a Machine's firmware and microcode), excluding code that is licensed under a license agreement other than the license agreement governing use of Machine Code (for example, IBM operating system and middleware products); and (ii) records, data, and structures created, used or relied on by the code in item (i) (for example, IBM System z Machine LIC configuration control records and passwords that help restrict access or use of the code in item (i)). The term Machine Code specifically includes any whole or partial copy of Machine Code, and any fix, patch, or replacement provided for Machine Code.

Machine Upgrade -- the following changes that IBM sells for installation on a Machine: a hardware or Machine Code change to modify, add, remove, enable or disable certain Built-in Capacity or other resources and capabilities. Each such change can be accomplished through a Machine conversion, or through the conversion, addition, removal, or exchange of a Machine's feature(s).

Materials -- literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that IBM may deliver to Customer as part of a Service. The

term "Materials" does not include Programs, Machine Code, or other items available under their own license terms or agreements.

Non-IBM Program – a Program licensed under a separate third party license agreement.

Other IBM Program – an IBM Program licensed under a separate IBM license agreement (e.g., IBM International Program License Agreement).

Other Internal Licensed Code – code for a Covered Machine that is separately provided by IBM and licensed by a third party.

Product – a Machine or a Program.

Program – the following, including the original, any portion thereof, and all whole or partial copies:

- a. one or more sequences of instructions suitable for processing by a computer;
- b. control data (such as control blocks, event logs, configuration files) defined within or generated by the execution of such sequence(s) of instructions. Control data includes without limitation data that is designed to (i) manage or limit the operation of programs, or (ii) help monitor, record, manage, or limit the consumption of software or hardware resources, including, without limitation, data used in IBM's implementation of Technological Measures;
- c. components;
- d. audio-visual content (such as images, text, recordings, or pictures) defined within or generated by the execution of, such sequence(s) of instructions; and
- e. related licensed materials such as publications and other documentation.

The term "Program" includes any ICA Program, Other IBM Program, or Non-IBM Program, and any fix, patch or replacement that IBM may provide for a Program. The term does not include Machine Code or Materials.

Service – performance of a task, assistance, support, or access to resources (such as an information database) that IBM makes available to Customer.

Specifications – information specific to a Product. IBM Machine Specifications are in a document entitled "Official Published Specifications." ICA Program Specifications are in a document entitled "Licensed Program Specifications."

Specified Operating Environment – the Machines and Programs with which an ICA Program is designed to operate, as described in its Licensed Program Specifications.

Technological Measures – all means, methods, systems, processes, checks, tests, monitoring, validations, instruments, and other measures that IBM implements for the purpose of: (i) protecting, controlling, limiting, and restricting the use of Machine Code; (ii) protecting, controlling, limiting, and restricting the access to or use of Built-in Capacity (including, for clarity, both Unauthorized Built-in Capacity and Authorized Built-in Capacity); and (iii) monitoring and reporting use of the Machine Code, Authorized Built-in Capacity, and Unauthorized Built-In Capacity, including for the purpose of calculating usage-based charges for IBM Products. Without limiting the generality of the preceding sentence, Technological Measures may be implemented, in whole or in part, in Machine Code, IBM Programs, other code, other IBM technology, and in the data created, used or relied upon by such Machine Code, IBM Programs, other code, and IBM technology.

Unauthorized Built-in Capacity -- all Built-in Capacity for a Covered Machine other than Authorized Built-in Capacity. For example and for the avoidance of any doubt, each of the following is Unauthorized Built-In Capacity: (i) in the case of a processor authorized to operate at less than its full processor performance setting, the capability to operate the processor at a greater processor performance setting; and (ii) in the case of a System z Machine specialty processor, the capability to use the specialty processor for anything other than the "Authorized Uses" as such term is defined in the AUT.

1.4 Acceptance of Terms

Customer accepts the terms in Attachments and Transaction Documents by i) signing them (by hand or electronically), ii) using the Product or Service, or allowing others to do so, or iii) making any payment for the Product or Service.

A Product or Service becomes subject to this Agreement when IBM accepts Customer's order by i) sending Customer a Transaction Document, ii) shipping the Machine or making the Program available to Customer, or iii) providing the Service.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

1.5 Delivery

Delivery dates and ship dates are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document. For Programs IBM provides to Customer in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Customer and IBM.

1.6 Charges and Payment

1.6.1 Charges

A Transaction Document specifies the amount payable for Products or Services, based on one or more of the following types of charges: one-time, recurring, time and materials, or fixed price. Additional charges may apply (such as special handling or travel related expenses). IBM will inform Customer in advance whenever additional charges apply.

Recurring charges for a Product begin on its Date of Installation. Charges for Services are billed as specified in a Transaction Document, which may be in advance, periodically during the performance of the Service, or after the Service is completed. Unless otherwise provided in this Agreement (including any applicable Attachment or Transaction Document): i) Services for which Customer prepays must be used within the applicable contract period; and ii) IBM does not give credits or refunds for any prepaid or other charges already due or paid.

If a Transaction Document provides an estimated total charge for time and materials or for usage charges, the estimate is for planning purposes only. IBM invoices charges based on actual time and materials expended or Customer's actual or authorized use, subject to any specified minimum commitment.

1.6.2 Usage Charges

One-time and recurring charges may be based on measurements of actual or authorized use (for example, authorized capacity for Machines, number of users or processor size for Programs, or meter readings for maintenance Services). Customer agrees to provide actual usage data as described in an Attachment or Transaction Document.

If Customer makes changes to its environment that impact usage charges, Customer agrees to promptly notify IBM and pay any applicable charges. Recurring charges will be adjusted accordingly. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.

1.6.3 Changes to Charges

From time to time, IBM may change its charges. Customer receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.

Unless provided otherwise in an Attachment or Transaction Document, IBM may increase recurring charges for Products and Services, as well as labor rates and minimums for Services provided under this Agreement, by giving Customer three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date IBM specifies in the notice.

IBM may increase one-time charges without notice. However, an increase to one-time charges does not apply to Customer if i) IBM receives the order before the announcement date of the increase and ii) one of the following occurs within three months after IBM's receipt of the order:

- a. IBM ships Customer the Machine or makes the Program available to Customer;
- b. Customer makes an authorized copy of a Program or distributes a chargeable component of a Program to another Machine; or
- c. a Program's increased use charge becomes due.

1.6.4 Payment

Amounts are due upon receipt of invoice and payable within 30 days or as specified in a Transaction Document. Customer agrees to pay accordingly, including any late payment fee. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties.

1.6.5 Taxes

If any authority imposes upon any transaction under this Agreement a duty, tax, levy, or fee, excluding those based on IBM's net income, then Customer agrees to pay that amount as specified in an invoice, unless Customer supplies exemption documentation. Customer is responsible for any personal property

taxes for each Product from the date IBM ships it to Customer. For Programs that IBM delivers electronically to Customer and for which Customer claims a state sales and use tax exemption, Customer and IBM agree that no tangible personal property (e.g., media and publications) is transferred to Customer.

Additional taxes and tax related charges may apply if IBM personnel are required to perform Services outside their normal tax jurisdiction. As practical, IBM will work to mitigate such additional tax and tax-related charges and will inform Customer in advance if these additional charges apply and are payable by Customer.

1.7 Changes to the Agreement Terms

In order to maintain flexibility in our business relationship, IBM may change the terms of this Agreement by providing Customer at least three months' written notice. However, these changes are not retroactive. They apply, as of the effective date IBM specifies in the notice, only to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, Customer may request that IBM defer the change effective date until the end of the current contract period.

Customer acknowledges its agreement to have these changes apply for such transactions by i) placing new orders for Products or Services after the change effective date, ii) failing to request that the change effective date be deferred until the start of the next renewal period, iii) allowing transactions to renew after receipt of the change notice, or iv) failing to terminate non-expiring transactions prior to the change effective date. Changes to charges are implemented as described in the Charges and Payment section above.

Otherwise, for a change to be valid, both parties must sign it.

1.8 IBM Business Partners

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Products and Services. Customer may order Products or Services that are promoted or marketed to Customer by IBM Business Partners or other suppliers, however, i) this Agreement applies only if a Transaction Document subject to this Agreement is provided for the specific transaction, and ii) such Business Partners and suppliers remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or other suppliers, any obligations either has to Customer, or any products or services that they supply to Customer under their agreements.

1.9 Intellectual Property Protection

For purposes of this Intellectual Property Protection section, the term "Product" also includes Materials and Machine Code.

1.9.1 Third Party Claims

If a third party asserts a claim against Customer that an IBM Product that IBM provides to Customer under this Agreement infringes that party's patent or copyright, IBM will defend Customer against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved in advance by IBM, provided that Customer:

- a. promptly notifies IBM in writing of the claim;
- b. allows IBM to control, and cooperates with IBM in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with the Product's applicable license terms and Customer's obligations under section 1.9.2 (Remedies) below.

1.9.2 Remedies

If such a claim is made or appears likely to be made, Customer agrees to permit IBM, in IBM's discretion, either to i) enable Customer to continue to use the Product, ii) modify it, or iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, then on IBM's written request, Customer agrees to promptly return the Product to IBM and discontinue its use. IBM will then give Customer a credit equal to:

- a. for a Machine, Customer's net book value calculated according to generally-accepted accounting principles;

- b. for an ICA Program, the amount Customer paid IBM for the Program's license or 12 months' charges (whichever is less); and
- c. for Materials, the amount Customer paid IBM for the creation of the Materials.

1.9.3 Claims for Which IBM is Not Responsible

IBM has no obligation regarding any claim based on any of the following:

- a. anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. a Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, to the extent a claim could have been avoided by using the current release or version;
- c. any modification of a Product made by Customer or by a third party on Customer's behalf or the combination, operation, or use of a Product with any other Product, hardware device, program, data, apparatus, method, or process;
- d. the distribution, operation or use of a Product outside Customer's Enterprise;
- e. running or executing an ICA Program on other than a Designated Machine; or
- f. a non-IBM Product or an Other IBM Program.

This Intellectual Property Protection section states IBM's entire obligation and Customer's exclusive remedy regarding any third party intellectual property claims.

1.10 Limitation of Liability

1.10.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Product or Service or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of \$100,000 or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this Limitation of Liability section, the term "Product" also includes Materials and Machine Code.

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible. The following amounts are not subject to a cap on the amount of damages:

- a. payments referred to in the Intellectual Property Protection section above; and
- b. damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable.

1.10.2 Items for Which IBM Is Not Liable

Except as expressly required by law without the possibility of contractual waiver, under no circumstances is IBM, its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

- a. loss of, or damage to, data;
- b. special, incidental, exemplary, or indirect damages or for any economic consequential damages; or
- c. lost profits, business, revenue, goodwill, or anticipated savings.

1.11 Compliance Verification

Upon reasonable notice, IBM may verify the usage data and other information affecting the calculation of charges under this Agreement. Such verification will be conducted in a manner that minimizes disruption to Customer's business and may be conducted on Customer's premises, during Customer's normal business hours. Customer agrees to i) provide records, system tools outputs, and other electronic or hard copy system information reasonably necessary for such verification, and ii) promptly pay any additional, valid charges and other liabilities determined as a result of such verification.

IBM's right to verify Customer's usage data and other information affecting the calculation of charges also includes the right to verify Customer's compliance with all other terms of this Agreement (including

applicable Attachments and Transaction Documents). IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

Customer agrees to create, retain, and provide to IBM and its auditors written records, system tools outputs, and other system information sufficient to provide auditable verification that Customer's installation and running or executing ICA Programs complies with the Agreement terms, including IBM's applicable licensing and pricing terms. IBM will notify Customer in writing if any such verification indicates that Customer is not in compliance with Agreement terms. The rights and obligations in this section remain in effect during the period any ICA Programs are licensed to Customer and for two years thereafter.

1.11.1 Circumvention of Technological Measures

Customer will not (i) Circumvent or attempt to Circumvent any Technological Measures in an IBM Product or use a third party or third party product to do so, or (ii) in any way access, use, or attempt to access or use, Unauthorized Built-in Capacity.

1.12 General Principles of Our Relationship

1.12.1 Notices and Communications

Written communications, including notices to the receiving party's designated representative, are to be sent to the address (physical, e-mail or facsimile) specified in an applicable Attachment or Transaction Document. The parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

1.12.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments without obtaining Customer's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

Customer agrees not to resell any Service without IBM's prior written consent. Any attempt to do so is void.

Customer agrees to acquire each Machine with the intent to use it as designed and in the form it was sold within Customer's Enterprise and not for reselling, leasing, or transferring it, in whole or in part, to a third party, unless either of the following applies:

- a. Customer is arranging lease-back financing for the Machine; or
- b. Customer has paid IBM's list price or reference price, as applicable for the Machine, and does not remarket it in competition with IBM or IBM's authorized remarketers.

1.12.3 Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology Products and Services. IBM is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Products and Services that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular Products or Services under this Agreement meets the requirements of such laws. Neither party is obligated to take any action that would violate applicable law.

Each party will comply with all applicable export and import laws, regulations, and associated embargo and sanction regulations, including prohibitions on export for certain end uses or to certain end users.

1.12.4 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

1.12.5 Other Principles of Our Relationship

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Product or Service under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Each party grants only the licenses and rights specified in this Agreement. No other licenses or rights (including licenses or rights under patents) are granted either directly, by implication, or otherwise. The rights and licenses granted to Customer under this Agreement may be terminated if Customer fails to fulfill its applicable payment obligations.
- e. Customer agrees that IBM may process the business contact information of Customer's employees and contractors and information about Customer as a legal entity (contact information) in connection with IBM Products and Services or in furtherance of IBM's business relationship with Customer. This contact information can be stored, disclosed internally and processed by International Business Machines Corporation and its subsidiaries, Business Partners and subcontractors wherever they do business, solely for the purpose described above provided that these companies comply with applicable data privacy laws related to this processing. Where required by applicable law, Customer has notified and obtained the consent of the individuals whose contact information may be stored, disclosed internally and processed and will forward their requests to access, update, correct or delete their contact information to IBM who will then comply with those requests.
- f. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except as described in the Intellectual Property Protection section above or as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- g. Customer is responsible for selecting the Products and Services that meet its needs and for the results obtained from the use of the Products and Services, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- h. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.

1.13 Agreement Termination

Either party may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations under this Agreement, including any applicable Attachment or Transaction Document.

Either party may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply. License termination and termination of a Services transaction are described in Parts 5 and 6, respectively.

Any terms of this Agreement that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

1.14 Geographic Scope and Governing Law

The rights, duties, and obligations of each party are valid only in the United States except that all licenses are valid as specifically granted.

Both parties agree to the application of the laws of the State of New York to govern, interpret, and enforce all of Customer's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

2. Warranties

2.1 The IBM Warranties

2.1.1 Warranty for IBM Machines

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine is a fixed period, specified in a Transaction Document. For Machines, unless otherwise specified, the Date of Installation is the Warranty Start Date.

During the warranty period, IBM provides repair and exchange Service for the IBM Machine, without charge, under the type of Service IBM designates for the IBM Machine. If an IBM Machine does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to IBM for a refund.

Additional terms regarding Service for Machines during and after the warranty period are in Part 6.

2.1.2 Warranty for ICA Programs

IBM warrants that each warranted ICA Program, when used in the Specified Operating Environment, will conform to its Specifications.

During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted ICA Program for at least one year following its general availability. The warranty period for an ICA Program expires when its Program Services are no longer available.

If an ICA Program does not function as warranted during the first year after Customer obtains its license and IBM is unable to make it do so, Customer may return the ICA Program and the charges Customer paid for the license will be refunded. To be eligible, Customer must have obtained its license while Program Services (regardless of the remaining duration) were available for the ICA Program. Additional terms regarding Program Services are contained in Part 5.

2.1.3 Warranty for IBM Services

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

2.1.4 Warranty for Systems

When IBM specifies in an Attachment or Transaction Document that it is providing Products to Customer that are intended to operate together as a system, IBM warrants that those Products are compatible and, when installed in accordance with their Specifications, will operate with one another. This warranty is in addition to IBM's other applicable warranties.

2.2 Extent of Warranty

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies in place of these Machine warranties.

The warranties stated above will not apply to the extent that there has been misuse (including, but not limited to, use of any Unauthorized Built-in Capacity or Circumvention of Technological Measures), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machines is voided by removal or alteration of Machine or parts identification labels.

For a Machine that IBM is responsible to install, if Customer elects to install the Machine itself or have a third party install the Machine, IBM may inspect the Machine at Customer's expense before providing warranty Service on the Machine. If the Machine is not in an acceptable condition for warranty Service, as

solely determined by IBM, Customer may request that IBM restore it to an acceptable condition for Service or Customer may withdraw its request for warranty Service. IBM, at its sole discretion, will determine if restoration is possible. Restoration is provided as a billable Service.

THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

2.2.1 Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects.

IBM will identify IBM Machines and ICA Programs that it does not warrant.

IBM's Warranty for ICA Programs does not extend to an ICA Program that is run or executed on other than a Designated Machine.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides Materials, non-IBM Products (including those provided with, or installed on, an IBM Machine at Customer's request), and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements.

3. Machines Terms

3.1 Production Status

Each IBM Machine is manufactured from parts that may or may not be new. In some cases, a Machine may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms described in Part 2 apply.

3.2 Title and Risk of Loss

When IBM accepts Customer's order, IBM agrees to sell Customer the Machine described in a Transaction Document. IBM transfers title to Customer or, if applicable, Customer's lessor when the Machine is shipped to Customer or its designated location. However, IBM reserves a purchase money security interest in the Machine until IBM receives the amounts due. For a feature, conversion, or Machine Upgrade involving the removal of parts that become IBM's property, IBM reserves a security interest until IBM receives payment of all the amounts due and the removed parts. Customer authorizes IBM to file appropriate documents to permit IBM to perfect its security interest.

For each Machine, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, Customer must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

3.3 Installation

3.3.1 Machine Installation

Customer agrees to provide an environment meeting the requirements for the Machine as specified in its published documentation.

Within 30 calendar days of the shipment of a Machine, Customer agrees to install the Machine or, if IBM is responsible for the installation, to allow IBM to install the Machine. IBM has standard installation procedures. IBM will successfully complete these procedures before it considers an IBM Machine (other than a Machine for which Customer defers installation or a Customer-set-up Machine) installed. For a Machine that IBM is responsible to install, if the Machine is not made available for IBM to install within six months from shipment, installation will be subject to an installation charge.

Customer is responsible for installing a Customer-set-up Machine and a non-IBM Machine according to instructions provided by IBM or the Machine's manufacturer.

3.3.2 Machine Upgrades and Engineering Changes

IBM sells Machine Upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Within 30 calendar days of the shipment of a Machine Upgrade, Customer agrees to install the Machine Upgrade or, if IBM is responsible for the installation, to allow IBM

to install the Machine Upgrade. Certain Machine Upgrade orders may be terminated at IBM's discretion if not made available for IBM to install within 30 calendar days of shipment, in which case Customer must return the Machine Upgrade to IBM at Customer's expense. In all cases, if the Machine Upgrade is not made available for IBM to install within six months from the date IBM ships the Machine Upgrade, installation will be subject to an installation charge.

Customer agrees to allow IBM to install mandatory Engineering Changes (such as those required for safety) on a Machine within 30 calendar days of IBM's notice to Customer unless otherwise agreed to by the parties.

Many Machine Upgrades and Engineering Changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the Machine Upgrade or Engineering Change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install Machine Upgrades and Engineering Changes and ii) transfer ownership and possession of removed parts to IBM. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance Service status of the replaced part.

4. Licenses for Machine Code and Other Internal Licensed Code

Customer acknowledges that each Covered Machine contains Machine Code and may also contain Other Internal Licensed Code. Regardless of the source from which Customer acquires an IBM Machine, IBM's license terms regarding Machine Code and Other Internal Licensed Code included with the Machine apply.

4.1 License for Machine Code

Customer's use of Machine Code on a Covered Machine is governed by the terms of the applicable IBM License Agreement for Machine Code provided at

http://www.ibm.com/systems/support/machine_warranties/machine_code.html

4.2 License for Other Internal Licensed Code (OILC)

OILC is licensed under, and Customer's use is governed by, the terms of the applicable license agreement(s) for such OILC provided at:

http://www.ibm.com/servers/support/machine_warranties/support_by_product.html

5. License for ICA Programs

5.1 License

When IBM accepts Customer's order, IBM grants Customer a nonexclusive license to use the ICA Program only within Customer's Enterprise in the United States. ICA Programs are owned by International Business Machines Corporation, one of its subsidiaries, or a third party and are copyrighted and licensed (not sold).

5.1.1 Authorized Use

Under each license, IBM authorizes Customer to:

- a. run or execute the ICA Program only on the Designated Machine specified by the Customer to IBM under the terms of Section 5.1.2 below;
- b. use the ICA Program to the extent of authorizations Customer has obtained;
- c. solely in support of the level of use authorized by IBM, make and install copies of the ICA Program on the following: (i) the Designated Machine, and (ii) on an additional Designated Machine, for backup purposes, if the ICA Program is not performing productive work (including, without limitation, production, development, test, program maintenance, mirroring, etc.) on such additional Designated Machine; provided that Customer reproduces the copyright notices and any other legends of ownership on each copy or partial copy; and
- d. use any portion of the ICA Program IBM i) provides in source form, or ii) marks restricted (for example, marked "Restricted Materials of IBM") only to:
 - (1) resolve problems related to the use of the ICA Program, and
 - (2) modify the ICA Program so that, while not otherwise violating the terms of this Agreement, it will work together with other products.

5.1.2 Customer's Additional Obligations

For each ICA Program, Customer agrees to:

- a. provide its IBM representative with the type/model and serial number of the Designated Machine, and provide advance written notice and the effective date of any change from one Designated Machine to another Designated Machine;
- b. comply with any additional or different terms in its Licensed Program Specifications or another Attachment or Transaction Document;
- c. ensure that anyone who uses it (accessed either locally or remotely) does so only for Customer's authorized use and complies with IBM's terms regarding ICA Programs; and
- d. maintain a record of all copies and provide it to IBM at its request.

5.1.3 Actions Customer May Not Take

For each ICA Program, Customer agrees not to:

- a. modify the ICA Program except as IBM expressly allows in this Agreement;
- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the ICA Program unless expressly permitted by applicable law without the possibility of contractual waiver; or
- c. sublicense, assign, rent, or lease the ICA Program or transfer it outside Customer's Enterprise.

5.2 Distributed System License Option

For some ICA Programs, Customer may make a copy under a Distributed System License Option (called a "DSLO" copy). IBM charges less for a DSLO copy than for the original license (called the "Basic" license). In return for the lesser charge, Customer agrees to do the following while licensed under a DSLO:

- a. have a Basic license for the ICA Program;
- b. provide problem documentation and receive Program Services (if any) only through the location of the Basic license; and
- c. distribute to, and install on, the DSLO's Designated Machine, any release, correction, or bypass that IBM provides for the Basic license.

5.3 Program Services

IBM provides Program Services for warranted ICA Programs. If IBM can reproduce Customer's reported problem in the Specified Operating Environment, IBM will issue defect correction information, a restriction, or a bypass. IBM provides Program Services for only the unmodified portion of a current release of an ICA Program.

IBM provides Program Services i) on an on-going basis (with at least six months' written notice before IBM terminates Program Services), ii) until the date IBM specifies, or iii) for a period IBM specifies.

5.4 License Termination

Customer may terminate the license for an ICA Program at any time on 30 calendar days' written notice to IBM.

IBM may terminate Customer's license for an ICA Program if Customer fails to comply with:

- a. the terms of this Section 5,
- b. the license terms for Machine Code applicable to the Designated Machine to which the ICA Program is licensed, or
- c. Section 1.11 of this Agreement as such Section pertains to the ICA Program or the Designated Machine to which the ICA Program is licensed.

For each ICA Program license that Customer acquired for a one-time charge, a replacement license may be acquired for an upgrade charge, if available. When Customer obtains a license for such replacement ICA Program, the license of the replaced ICA Program is terminated when charges become due, unless IBM specifies otherwise.

If an ICA Program's license is terminated, Customer's authorization to use the ICA Program is also terminated.

Customer agrees to promptly destroy all copies of the Program after either party has terminated the license.

6. Services

6.1 Personnel

Each party will assign personnel that are qualified to perform the tasks required of such party under this Agreement and is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.

IBM may engage subcontractors to provide or assist in providing Services, in which case IBM remains responsible for the fulfillment of its obligations under this Agreement and for the performance of the Services.

6.2 Materials Ownership and License

An Attachment or Transaction Document will specify Materials to be delivered to Customer and identify them as "Type I Materials," "Type II Materials," or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

Customer will own the copyright in Materials created as part of a Service that are identified as "Type I Materials" and each such Material will constitute a "work made for hire" to the extent permissible under U.S. copyright law. If any such Materials are not works made for hire under applicable law, IBM assigns the ownership of copyrights in such Materials to Customer. Customer grants IBM an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.

IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within Customer's Enterprise only) copies of Type II Materials.

IBM or its suppliers retains ownership of the copyright in any of IBM's or its suppliers' works that pre-exist or were developed outside of this Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to Customer, if any, or otherwise as Type II Materials.

Each party agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this section.

6.3 Customer Resources

If Customer is making available to IBM any facilities, software, hardware or other resources in connection with IBM's performance of Services, Customer agrees to obtain any licenses or approvals related to these resources that may be necessary for IBM to perform the Services and develop Materials. IBM will be relieved of its obligations that are adversely affected by Customer's failure to promptly obtain such licenses or approvals. Customer agrees to reimburse IBM for any reasonable costs and other amounts that IBM may incur from Customer's failure to obtain these licenses or approvals.

Unless otherwise agreed in an Attachment or Transaction Document, Customer is responsible for i) any data and the content of any database Customer makes available to IBM in connection with a Service under this Agreement, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data. IBM's responsibilities regarding such data or database, including any confidentiality and security obligations, are governed by the Attachments and Transaction Documents applicable to the particular Services Transaction (which prevail over the terms of any separate confidentiality agreements) and subject to the Limitation of Liability and other terms in this Agreement.

6.4 Service for Machines (during and after warranty)

6.4.1 Service for Machines

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform Customer of the available types of Service for a Machine. At its discretion, IBM will i) either repair or exchange the failing Machine and ii) provide the Service either at Customer's location or a service center. IBM manages and installs selected Engineering Changes that apply to IBM Machines and may also perform preventive maintenance.

Any feature, conversion, or Machine Upgrade IBM Services must be installed on a Machine which is i) the designated, serial-numbered Machine, if applicable, and ii) at an Engineering-Change level compatible with the feature, conversion, or Machine Upgrade.

When the type of Service requires that Customer deliver the failing Machine to IBM, Customer agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will deliver it to Customer at IBM's expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, Customer's Machine while it is i) in IBM's possession or ii) in transit in those cases where IBM is responsible for the transportation charges.

Customer agrees:

- a. to obtain authorization from the owner to have IBM service a Machine that Customer does not own;
- b. where applicable, before IBM provides Service, to --
 - (1) follow the problem determination and service request procedures that IBM provides,
 - (2) secure all programs, data, and funds contained in a Machine, and
 - (3) inform IBM of changes in a Machine's location.
- c. to follow the Service instructions that IBM provides (which may include installing Machine Code and other software updates either downloaded from an IBM Internet Web site or copied from other electronic media); and
- d. when Customer returns a Machine to IBM for any reason --
 - (1) to securely erase from any Machine all programs not provided by IBM with the Machine and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data") and ii) Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
 - (2) to remove all funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that Customer returns to IBM; and
 - (3) IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

6.4.2 Replacements

When Service involves the exchange of a part or Machine, the item IBM replaces becomes IBM's property and the replacement becomes Customer's. Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a part or Machine, Customer agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. Customer also agrees to i) ensure that the part or Machine is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to IBM.

Service for some IBM Machines involves IBM providing Customer with an exchange replacement for installation by Customer. Such exchange replacements may be i) a part of a Machine (called a Customer Replaceable Unit, or "CRU," e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine. Customer may request IBM to install the replacement CRU or Machine, however, Customer may be charged for the installation. IBM provides information and replacement instructions with Customer's Machine and at any time on Customer's request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement, and Customer may be charged for the replacement if IBM does not receive the failing CRU or Machine within 15 calendar days of Customer's receipt of the replacement.

6.4.3 Items Not Covered

Repair and exchange Services do not cover:

- a. accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);

- b. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or a third party;
- c. Machines with removed or altered Machine or parts identification labels;
- d. failures caused by a product for which IBM is not responsible;
- e. service of Machine alterations; or
- f. service of a Machine on which Customer is using capacity or capability, other than that authorized by IBM in writing.

6.5 Warranty Service Upgrade

For certain Machines, Customer may select a Service upgrade from the standard type of warranty Service for the Machine. IBM charges for the Service upgrade during the warranty period.

Customer may not terminate the Service upgrade or transfer it to another Machine during the warranty period.

When the warranty period ends, the Machine will convert to maintenance Service at the same type of Service Customer selected for warranty Service upgrade.

6.6 Maintenance Coverage

When Customer orders maintenance Service for Machines, IBM will inform Customer of the date on which maintenance Service will begin. IBM may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, Customer may have IBM restore it for a charge or Customer may withdraw its request for maintenance Service. However, Customer will be charged for any maintenance Service that IBM has performed at Customer's request.

6.7 Automatic Service Renewal

Renewable Services renew automatically for a same length contract period unless either party provides written notification (at least one month prior to the end of the current contract period) to the other of its decision not to renew.

During an automatic renewal period, Customer may terminate the Service on one month's written notice, and IBM will provide Customer a prorated credit for any unused Services for which Customer has paid in advance.

6.8 Termination and Withdrawal of a Service

Either party may terminate a Service transaction if the other materially fails to meet its obligations concerning the Service.

Customer may terminate a Service, on notice to IBM provided Customer has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents.

For a maintenance Service, Customer may terminate without adjustment charge, provided any of the following circumstances occur:

- a. Customer permanently removes the eligible Product, for which the Service is provided, from productive use within Customer's Enterprise;
- b. the eligible location, for which the Service is provided, is no longer controlled by Customer (for example, because of sale or closing of the facility); or
- c. the Machine has been under maintenance Service for at least one year and Customer gives IBM one month's written notice prior to terminating the maintenance Service.

Customer agrees to pay IBM for i) all charges for Services IBM provides and any Products and Materials IBM delivers through Service termination, and ii) reimbursable expenses IBM incurs through Service termination. If Customer terminates without cause, Customer also agrees to pay any applicable adjustment or termination charges and for expenses IBM incurs as a result of such termination (which IBM will take reasonable steps to mitigate).

IBM may withdraw a Service or support for an eligible Product on three months' written notice to Customer. If IBM withdraws a Service for which Customer has prepaid and IBM has not yet fully provided it to Customer, IBM will give Customer a prorated refund.

Any terms that by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

This Agreement, including its applicable Attachments and Transaction Documents, is the complete agreement regarding transactions by which Customer purchases Machines, licenses ICA Programs, obtains Program licenses, and acquires Services from IBM, and replaces all prior oral or written communications, representations, understandings, warranties, promises, covenants, and commitments between Customer and IBM. In entering into this Agreement, including each Attachment and Transaction Document, neither party is relying on any representation that is not specified in this Agreement. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party accepts, on behalf of its Enterprise, the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Products and Services ordered under this Agreement are subject to it.

Agreed to:
County of Alameda, Social Services Agency

Agreed to:
International Business Machines Corporation

By Don R Edwards
Authorized signature

Title: ASSISTANT AGENCY DIRECTOR
Name (type or print): DON EDWARDS
Date: 9-5-14

Customer number:

Enterprise number:

Customer address: 2000 San Pablo Avenue, 4th Floor,
Oakland, CA 94612

By Devin F. Brown
Authorized signature

Title:
Name (type or print): Devin F. Brown
Date: 9/5/14

Agreement number:

IBM address: 2710 Gateway Oaks Drive, South
Building, Suite 200, Sacramento, CA 95833

Agreement for Exchange of Confidential Information

This Agreement for Exchange of Confidential Information (Agreement) provides protection for confidential information (Information) while maintaining each party's ability to conduct its respective business activities. Each party agrees that the following terms apply when one party (Discloser) discloses Information to the other (Recipient).

1. Disclosure

Information not marked with a restrictive legend of Discloser or disclosed orally must be identified as confidential at the time of disclosure.

Each disclosure of Information is subject to this Agreement for two years following the initial date of disclosure.

2. Obligations

Recipient agrees to use Information for the purpose for which it was disclosed or otherwise for the benefit of Discloser, and not to intentionally disclose Information other than to the following:

- a. Recipient's employees and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. Control means to own or control, directly or indirectly, over 50% of voting shares;
- b. subcontractors, financial and legal advisors, and then only to those who have a need to know; or
- c. any other party with Discloser's prior written consent.

Before disclosure to any party in (a) – (c), Recipient will have a written agreement with such party sufficient to require that party to treat Information substantially the same as described in this Agreement.

If required to disclose Information by law or court order, Recipient will endeavor to give Discloser prompt notice to allow Discloser a reasonable opportunity to obtain a protective order.

3. Disclaimers

DISCLOSER PROVIDES INFORMATION WITHOUT WARRANTIES OF ANY KIND and is not liable for any damages arising out of Recipient's use of Information disclosed under this Agreement.

This Agreement does not require either party to disclose or to receive Information, perform any work, or enter into any license, business engagement or other agreement. Neither this Agreement nor any disclosure of Information made under it grants Recipient any right or license under any trademark, copyright or patent, now or subsequently owned or controlled by Discloser. The exchange of Information under this Agreement does not create any joint or fiduciary relationship, or authorize either party to act or speak on behalf of the other.

The receipt of Information under this Agreement does not in any way preclude Recipient from:

- a. developing, manufacturing, marketing or providing to others products or services which may be competitive with products or services of Discloser;
- b. assigning its employees in any way it may choose; or
- c. entering into any business relationship with any other party or developing, manufacturing, marketing or providing products or services to others who compete with the Discloser.

Any Information regarding Discloser's future products or services is subject to change or withdrawal without notice. The development, release, and timing of any future features or functionality described for Discloser's products and services remains at Discloser's sole discretion.

Recipient may disclose, disseminate, and use Information that is already in its possession which was received by Discloser without obligation of confidentiality, developed independently, obtained from a source other than Discloser without obligation of confidentiality, publicly available when received or subsequently becomes publicly available through no fault of the Recipient, or disclosed by Discloser to another without obligation of confidentiality.

4. General

- a. **Assignment.** Neither party may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent. Any attempt to do so is void.
- b. **Termination.** Either party may terminate this Agreement by providing at least one month's written notice to the other. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.
- c. **Modification.** Only a written agreement signed by both parties can modify this Agreement.
- d. **Choice of Law.** Both parties agree to the application of the laws of the State of New York to govern, interpret, and enforce all of the parties' respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.
- e. **Import/Export Compliance.** Each party will comply with all applicable export and import laws and associated embargo and economic sanction regulations, including those of the United States, that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.

This Agreement, including its applicable supplements, is the complete agreement regarding the exchange of Information, and replaces all prior oral or written communications, representations, warranties, covenants, and commitments between Company and IBM regarding the exchange of Information. In entering into this Agreement, including each supplement, neither party is relying on any representation not specified in this Agreement or the applicable supplement. Additional or different terms in any written communication from Company are void.

Each party accepts the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this Agreement or a supplement made by reliable means is considered an original and ii) all disclosures of Information under this Agreement are subject to it.

Agreed to:

County of Alameda, Social Services Agency

By Don R Edwards

Authorized Signature

Name (type or print): DON R EDWARDS

Date: 9-5-14

Identification number:

Address: 2000 San Pablo Avenue, 4th Floor,
Oakland, CA 94612

Agreed to:

International Business Machines Corporation ("IBM")

By Devin F. Brown

Authorized Signature

Name (type or print): Devin F. Brown

Date: 9/5/14

Agreement number:

IBM address: 2710 Gateway Oaks Dr., South Building,
Suite 200, Sacramento, CA 95833

International Passport Advantage Agreement

This IBM International Passport Advantage Agreement ("Agreement") governs transactions by which Customer acquires Eligible Products. Customer Originating Company and IBM Originating Company agree to coordinate the administration of this Agreement within their respective Enterprises. This Agreement is entered into with the understanding that both Customer Originating Company and IBM Originating Company are bound by its terms. Both Customer Originating Company and IBM Originating Company agree to distribute copies of this Agreement to their respective participating Enterprise companies. The Customer Originating Company is responsible for all Sites' compliance with the terms of this Agreement.

This Agreement, including any applicable Attachments, Terms of Use, and any Transaction Documents is the complete agreement regarding transactions by which Customer acquires Eligible Products, and replace any prior oral or written agreements, communications, representations, statements, understandings, warranties, promises, covenants, commitments, or undertakings between Customer and IBM concerning Passport Advantage.

If there is a conflict among the terms of this Agreement, Attachments, Terms of Use, and Transaction Documents, those of an Attachment prevail over those of this Agreement, those of Terms of Use prevail over those of an Attachment and this Agreement, and the terms of a Transaction Document prevail over those of this Agreement, the Terms of Use, and an Attachment.

Once this Agreement is accepted, 1) unless prohibited by applicable law or specified otherwise, any reproduction of it or a Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and 2) all Eligible Products ordered under this Agreement are subject to it.

1. General

1.1 Agreement Structure

This Agreement is organized in six Parts:

Part 1 – General includes terms regarding Agreement Structure, Attachments and Transaction Documents, Definitions, Acceptance of Terms, Delivery, Payment, Taxes, RSVP Level, Changes to Agreement Terms, Eligible Products, IBM Business Partners and Resellers, Intellectual Property Protection, Limitation of Liability, General Principles of Our Relationship, Agreement Termination, Compliance Verification, and Geographic Scope and Governing Law.

Part 2 – Warranties includes terms regarding Warranty for IBM Programs, Warranty for IBM Software Subscription and Support and Selected Support, Warranty for IBM Machine Components of IBM Appliances, Warranty for IBM SaaS, and Extent of Warranty.

Part 3 – Programs and Subscription and Support includes terms regarding IBM Programs, Programs in a Virtualization Environment, Fixed Term Licensing, CEO Product Categories, and Software Subscription and Support and Selected Support.

Part 4 – Appliances includes terms regarding Virtual Appliance, Appliances Comprising Both Program and Machine Components, Program Components and Machine Components.

Part 5 – IBM SaaS includes terms regarding Ownership, Customer's Right to Use, Subscription to IBM SaaS, IBM SaaS Technical Support, Content, and Termination of IBM SaaS.

Part 6 – Reserved.

1.2 Attachments and Transaction Documents

Additional terms for Eligible Products are in documents called "Attachments" and "Transaction Documents" provided by IBM. Depending upon their country of use, Attachments may have different names. In general, Attachments contain terms that may apply to more than one transaction, while Transaction Documents (such as a supplement, schedule, invoice, exhibit, or addendum) contain specific details and terms related to an individual transaction. Customer may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

1.3 Definitions

Additional Site – any Site that subsequently enrolls under this Agreement.

Anniversary – the first day of the month that follows the anniversary of the Effective Date, unless the Effective Date is the first day of a month, in which event the anniversary of the Effective Date is the Anniversary.

Appliance – an Eligible Product, designed for a particular function and not for general purpose computing tasks, that may be a Program (in the case of a “Virtual Appliance”) or composed of a Program Component, a Machine Component, and any Machine Code Component that IBM may provide to Customer.

Audit Reports – a set of reports available in the IBM License Metric Tool (“ILMT”), or by another method acceptable to IBM as specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> . These reports provide the Processor Value Unit (“PVU”) license requirements based on the Virtualization Capacity available to the Eligible Sub-Capacity Product.

CEO User – an individual to whom a machine has been assigned that is capable of copying, using, or extending the use of Programs in a CEO Product Category.

Content – information, software, and data, including, without limitation, any Personal Data, hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets, or servlets that are created, provided, uploaded, or transferred by Customer and any user authorized by Customer.

Customer – the customer Enterprise company that is ordering Eligible Products.

Customer Originating Company – the legal entity within Customer's Enterprise of which the entity that identifies itself as the “Originating Site” on an “IBM International Passport Advantage Enrollment Form” is a part.

Customer-set-up Machine Component – an IBM Machine Component that Customer is responsible for installing according to instructions provided with it.

Date of Installation –

- a. for a Customer-set-up Machine Component, the date on Customer's purchase invoice or sales receipt for the Appliance is the Date of Installation, unless IBM or Customer's IBM reseller informs Customer otherwise.
- b. for an IBM Machine Component that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;

Effective Date – the date IBM accepts Customer's initial order for Eligible Products, either directly from Customer or from Customer's reseller.

Eligible Operating System Technology – an operating system for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Eligible Processor Technology – a processor technology for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Eligible Products – commercially available IBM Programs, Non-IBM Programs, Selected Support, authorizations to increase Customer's use of a Program, IBM Trade-ups, Competitive Trade-ups, Annual IBM Software Subscription and Support Renewals, IBM Software Subscription and Support Reinstatement, Annual Third Party Software Subscription and Support Renewals, Third Party Software Subscription and Support Reinstatement, Selected Support renewals, IBM SaaS, and Appliances.

Eligible Sub-Capacity Product – a Product for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Eligible Virtualization Environment – a server or a group of servers cooperating as a single computing entity that contain an Eligible Processor Technology, an Eligible Operating System Technology, and an Eligible Virtualization Technology.

Eligible Virtualization Technology – a virtualization technology for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> . An Eligible Virtualization Technology is capable of restricting processor capacity to a subset of the total physical capacity, sometimes referred to as partition, LPAR, or virtual machine.

Engineering Change – an update to modify certain aspects of the design of an installed Machine Component, including without limitation the design of a certain Machine Component part(s) or Machine Code Component.

Enterprise – any legal entity that, by more than 50%, owns, is owned by, or is under common ownership with the Originating Company.

Fixed Term – a definite period of time specified by IBM in a Transaction Document, for example, in a Program's PoE.

Full Capacity – The total number of physical processor cores activated and available for use on a server.

IBM – the IBM Enterprise company that is providing Eligible Products.

IBM Business Partner – an organization with which IBM has signed agreements to promote, market, and, in some instances, support certain Eligible Products.

IBM Machine Component – a Machine Component bearing an IBM logo.

IBM Originating Company – the legal entity within International Business Machines Corporation's Enterprise that accepts the Customer Originating Company's orders.

IBM Program – a Program acquired under this Agreement and subject to the IPLA, including its LI.

IBM Software as a Service ("IBM SaaS") – offerings IBM makes available to Customer remotely through the Internet providing access to (i) functionality of Programs, (ii) infrastructure, and (iii) technical support. IBM SaaS is not a Program but may require Customer to download enabling software in order to use it. IBM SaaS is an Eligible Product.

IBM SaaS User – one who accesses IBM SaaS using a user account identification and password associated with Customer's IBM SaaS account and provided by Customer.

IBM Software Subscription and Support – software subscription and support provided for IBM Programs licensed under the IPLA. See **3.5.1 IBM Software Subscription and Support** for further description.

IPLA – IBM's International Program License Agreement. The IPLA is included with each IBM Program in the Program's directory, in a library identified as "License," a booklet, or on a CD. It is also available on the Internet at <http://www.ibm.com/software/sla> and from IBM and its resellers.

License Information ("LI") – a document that provides information and any additional terms specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI can also be found in the Program's directory, by the use of a system command, or as a booklet included with the Program.

Machine Code Component – microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, diagnostics, and any other code (all subject to any exclusions in the license provided with it) delivered with an IBM Machine Component for the purpose of enabling the Machine Component's function, as stated in its Specifications.

Machine Component – a hardware device, features, conversions, Upgrades, elements, or accessories, or any combination of them. The term "Machine Component" includes an IBM Machine Component and any non-IBM Machine Component (including other equipment) that IBM may provide to Customer.

Non-IBM Program – a Program that is governed by the terms of the third party end user license agreement that accompanies it. IBM is not a party to the third party end user license agreement and assumes no obligations under it.

Originating Company – the legal entity that is authorized to execute and administer this Agreement on behalf of an Enterprise. The Originating Company need not be a "company" and may be the entire Enterprise.

Originating Site – Originating Company Site.

Personal Data – any information that can be used to identify a specific individual, such as name, email address, home address, or phone number that is provided to IBM to store, process, or transfer on Customer's behalf.

Processor Chip – Electronic circuitry containing one or more Processor Cores that plugs into a Processor Socket.

Processor Core – A physical functional unit within a computing device that interprets and executes program instructions and consists of at least one instruction control unit and one or more arithmetic and logic units. A multi-core technology allows two or more Processor Cores to be active on a single Processor Chip. A System z Integrated Facility for Linux (IFL) engine is considered a single Processor Core.

Processor Socket – Electronic circuitry that accepts a Processor Chip.

Processor Value Unit ("PVU") – A metric used by IBM to assign a value to a Processor Core. The Processor Value Unit licensing model is described at http://www.ibm.com/software/lotus/passportadvantage/pvu_licensing_for_customers.html.

Program – the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

Program Component – an IBM Program or Non-IBM Program that is preinstalled on a Machine Component.

Proof of Entitlement ("PoE") – the document in which IBM specifies an Eligible Product's level of authorized use. This PoE, supported by Customer's matching paid invoice or receipt, is evidence of Customer's level of authorized use.

RSVP – Relationship Suggested Volume Price.

Selected Program – a Non-IBM Program or an IBM Program licensed under the terms of the IBM License Agreement for Non-Warranted Programs.

Selected Support – Support for specified Selected Programs.

Service Provider – an entity that provides information technology services for end user customers, either directly or through a reseller.

Site – any defined entity, such as a physical location or organizational unit, e.g., a department, division, subsidiary or cost center, of Customer's Enterprise and for which IBM assigns a Passport Advantage Site Number.

Specifications – information specific to a Machine Component. IBM Machine Component Specifications are in a document entitled "Official Published Specifications."

Sub-Capacity Licensing – Licensing of Eligible Sub-Capacity Products based on Virtualization Capacity.

Subscription Period – the time during which IBM SaaS is made available to Customer as specified in the applicable Transaction Document.

SVP – Suggested Volume Price.

Term – the period that begins either on the date IBM accepts Customer's initial order (in the case of the initial Term) or on the Anniversary (in the case of subsequent Terms), and ends on the day immediately prior to the next Anniversary.

Terms of Use ("ToU") – additional terms under which IBM makes IBM SaaS offerings available to Customer and viewed at <http://www.ibm.com/software/sla/slabdb.nsf/sla/tou/>.

Third Party Software Subscription and Support – software subscription and support provided under the third party's terms for Non-IBM Programs. See **3.5.1 Software Subscription and Support** for further description.

Upgrade – a change to a Machine Component to modify, add, remove, enable, or disable a certain Machine Component resource or function. Each such change can be accomplished through a Machine Component conversion, or through the conversion, addition, removal, or exchange of a Machine Component's feature(s), but only to the extent announced and supported by IBM for the Machine Component.

Virtualization Capacity – the highest peak processor capacity available to an Eligible Sub-Capacity Product when deployed on an Eligible Virtualization Environment in accordance with the rules specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>.

1.4 Acceptance of Terms

The Customer Originating Company and thereafter each of its participating Enterprise companies accepts this Agreement without modification by submitting an IBM International Passport Advantage Enrollment Form to IBM or the reseller(s) from whom they have chosen to acquire Eligible Products, as applicable. This Agreement is effective on the Effective Date and remains in effect until the Customer Originating Company or the IBM Originating Company terminates it in accordance with **Section 1.15 Agreement Termination**.

An Eligible Product becomes subject to this Agreement when IBM accepts Customer's order by i) sending Customer a Transaction Document, ii) making the Program or IBM SaaS available to Customer or, when applicable, shipping the Appliance, or iii) providing the support, service, or solution.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

1.5 Delivery

Transportation charges, if applicable, will be specified in a Transaction Document. For Programs IBM provides to Customer in tangible form, IBM fulfills its shipping and delivery obligations upon delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Customer and IBM.

1.6 Payment

- a. When Customer acquires Eligible Products from a reseller, Customer pays reseller directly.
- b. When Customer acquires Eligible Products from IBM, Customer agrees to pay as IBM specifies in its invoice or equivalent document, including any late payment fee; and
- c. The amount payable for a Program license may either be a one-time charge or a charge for a Fixed Term, depending on the type of license.

1.7 Taxes

If, as a result of Customer moving, accessing, or using an Eligible Product across a border, any authority imposes a customs duty, tax, levy or fee (including withholding taxes for the import or export of any such Eligible Product), then Customer agrees that it is responsible for, and will pay, any such customs duty, tax, levy or fee. This excludes those taxes based on IBM's net income.

1.8 RSVP Level

The initial "RSVP Level" is established by the point value of the initial order. If Customer acquires additional Eligible Products during a Term, Customer may attain higher RSVP Levels. The higher RSVP Level applies only when Customer acquires additional Eligible Products after the higher level is attained, except where the point value of an individual order by itself exceeds the point requirement for a higher "SVP Level." In such case, the higher SVP Level applies to the order.

At the first and each subsequent Anniversary, the RSVP Level is set, based on the Eligible Products Customer has acquired during the previous Term. If, in a subsequent Term, the point value of the Eligible Products Customer acquires during that Term is less than the point value necessary to maintain the current RSVP Level, then at the next Anniversary the RSVP Level will be reduced to reflect the level at which Customer is currently acquiring Eligible Products but not by more than one RSVP Level.

SVP/RSVP Level Table:

SVP/RSVP Level	BL	D	E	F	G	H
Points	<500	500	1,000	2,500	5,000	10,000

1.9 Changes to Agreement Terms

IBM may change the terms of this Agreement by giving the Customer Originating Company three months' written notice by letter or e-mail. Such change applies as of the date IBM specifies in the notice. Customer agrees that Customer has consented to any such change if Customer does not notify IBM in writing prior to the effective date specified in IBM's written notice that Customer disagrees with the change.

Otherwise, for a change to be valid, both the Customer Originating Company and the IBM Originating Company must sign it. Additional or different terms in any order or written communication from Customer are void.

1.10 Eligible Products

Each orderable part number for an Eligible Product is assigned a point value, which may be zero. This point value is used to determine Customer's RSVP or a transaction's SVP, as applicable. See Section 1.8 RSVP Level above.

IBM may add or withdraw Eligible Products or change an Eligible Product's SVP or point value at any time. If IBM withdraws an Eligible Product from marketing, Customer will no longer be able to acquire it under this Agreement.

If IBM withdraws a Program or a version of a Program from marketing, Customer may not increase its level of use, beyond the authorizations already acquired, on or after the effective date of withdrawal without IBM's prior written consent, which IBM will not unreasonably withhold.

1.11 IBM Business Partners and Resellers

In addition to acquiring Eligible Products from IBM, the Originating Site and the Additional Sites may acquire them from IBM Business Partners and resellers. Not all resellers, however, are authorized to resell all Eligible Products.

When Customer orders Eligible Products from Customer's IBM Business Partner(s) or reseller(s), IBM is not responsible for 1) their actions, 2) any additional obligations they have to Customer, or 3) any products or services that they supply to Customer under their agreements. When Customer acquires Eligible Products from an IBM Business Partner or reseller, the IBM Business Partner or reseller sets the charges and payment terms.

1.12 Intellectual Property Protection

For purposes of this Section 1.12, the term "Product" means an IBM Program, Machine Code Component, or IBM Machine Component.

1.12.1 Third Party Claims

If a third party asserts a claim against Customer that a Product infringes that party's patent or copyright, IBM will defend Customer against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved in advance by IBM, provided that Customer:

- a. promptly notifies IBM in writing of the claim;
- b. allows IBM to control, and cooperate with IBM in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with the Product's license and other terms and Customer's obligations under Remedies below.

1.12.2 Remedies

If such a claim is made or appears likely to be made, Customer agrees to permit IBM, in IBM's discretion, to: i) enable Customer to continue to use the Product; ii) modify it; or iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, Customer agrees to immediately discontinue use of the Product and return it and all copies to IBM on IBM's written request. IBM will then give Customer a credit equal to the amount Customer paid for the returned Product (if the Product is subject to Fixed Term charges, up to twelve months' charges).

1.12.3 Claims for Which IBM is Not Responsible

IBM has no obligation regarding any claim arising from or related to any of the following:

- a. anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. modification of a Product by Customer or a third party on Customer's behalf;
- c. a Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, when a claim could have been avoided or the risk of a claim reduced by using the current version or release;
- d. the combination, operation, or use of the Product with any program, hardware device, data, apparatus, method, or process;
- e. the distribution, operation, or use of the Product outside Customer's Enterprise or for the benefit of any third party; or
- f. Separately Licensed Code, if any, as identified in the LI for the Product.

The LI for the Product or other documents may permit Customer to copy, modify, or redistribute all or portions of the Product without paying additional licensing fees to IBM. The indemnification obligation under this Agreement only applies to copies of the Product provided to Customer by IBM and additional copies expressly authorized in a PoE. IBM has no obligation for claims relating to copies of the Product

neither provided by IBM nor specifically authorized by a POE, even if permitted by the LI for the Product or other documents.

This Intellectual Property Protection section states IBM's entire obligation and Customer's exclusive remedy regarding any third party intellectual property claims. This Intellectual Property section does not obligate in any manner any third-party supplier of code (including Separately Licensed Code) included with or part of the Product.

1.13 Limitation of Liability

The limitations and exclusions in this **Section 1.13 (Limitation of Liability)** apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

1.13.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Eligible Product or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of U.S. \$100,000 (or equivalent in local currency) or the charges (if the Eligible Product is IBM SaaS or is subject to Fixed Term charges, up to 12 months' charges) Customer paid for the Eligible Product that is the subject of the claim.

This limit also applies to any of IBM's Eligible Product developers and suppliers. It is the maximum for which IBM and its Eligible Product developers and suppliers are collectively responsible. Damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable are not subject to a cap on the amount of damages.

1.13.2 Items for Which IBM Is Not Liable

UNDER NO CIRCUMSTANCES IS IBM, ITS ELIGIBLE PRODUCT DEVELOPERS, OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

- a. **LOSS OF, OR DAMAGE TO, DATA;**
- b. **SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**
- c. **LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

1.14 General Principles of Our Relationship

1.14.1 Notices and Communications

To the extent permissible under applicable law, the parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

1.14.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments without obtaining Customer's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

Customer agrees that Eligible Products are for use within Customer's Enterprise only and may not be resold, rented, leased, or transferred to third parties. Any attempt to do so in violation of these provisions is void.

1.14.3 Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology products and services. IBM is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Eligible Products that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular Eligible Products under this Agreement meets

the requirements of such laws. Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate law applicable to that party.

Each party agrees to comply with all applicable export and import laws and regulations including without limitation United States embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

1.14.4 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any such claim and all respective rights related to the claim lapse.

1.14.5 Other Principles of Our Relationship

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Eligible Product under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Customer authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors, IBM Business Partners, and resellers) to store and use Customer's business contact information wherever they do business, in connection with IBM Eligible Products or in furtherance of IBM's business relationship with Customer.
- e. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except as described in section 1.12 (Intellectual Property Protection) above or permitted in Section 1.13 (Limitation of Liability) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- f. Customer is responsible for selecting the Eligible Products that meet its needs and for the results obtained from the use of the Eligible Products, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- g. Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties.
- h. Where approval, acceptance, consent, or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. Customer agrees that their use of IBM SaaS will comply with the IBM acceptable use policy at <http://www.ibm.com/services/us/imc/html/aup.html> and applicable data protection laws.
- k. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.
- l. In entering into this Agreement, including each Attachment, ToU, and Transaction Document, neither party is relying on any representation that is not specified in this Agreement, including without limitation any representations concerning: i) performance or function of any Eligible Product, other than as expressly warranted in this Agreement; ii) the experiences or recommendations of other parties; or iii) any results or savings that Customer may achieve.

1.15 Agreement Termination

The Customer Originating Company may terminate this Agreement without cause on one month's written notice.

The IBM Originating Company may terminate this Agreement on three months' written notice. If Customer acquired or renewed either IBM Software Subscription and Support for any IBM Programs or IBM SaaS prior to the notice of termination, IBM may either continue to provide IBM Software Subscription and Support to Customer for those Programs or those IBM SaaS offerings for the remainder of the current term or give Customer a prorated refund. If Customer acquired or renewed Third Party Software Subscription and Support for any Non-IBM Programs prior to the notice of termination, the third party may continue to provide Third Party Software Subscription and Support to Customer for that Non-IBM Program license for the remainder of the current term. If the third party does not do so, Customer may obtain a prorated refund.

The Customer Originating Company will be considered to have terminated this Agreement if neither it nor any of its participating Enterprise companies have placed orders for Eligible Products for 24 consecutive months nor have software subscription and support in effect.

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

Any terms of this Agreement that by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

1.16 Compliance Verification

For purposes of this **Section 1.16 (Compliance Verification)**, "Passport Advantage Terms" means 1) this Agreement and applicable Attachments, Transaction Documents, and Terms of Use provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (<http://www.ibm.com/softwarepolicies/>), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this **Section 1.16** remain in effect during the period the Eligible Product is in the possession or control of Customer, and for two years thereafter.

1.16.1 Verification Process

Customer agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Customer's use of all Eligible Products is in compliance with the Passport Advantage Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Customer is responsible for 1) ensuring that it does not exceed its authorized use, and 2) remaining in compliance with Passport Advantage Terms.

Upon reasonable notice, IBM may verify Customer's compliance with Passport Advantage Terms at all Sites and for all environments in which Customer uses (for any purpose) Eligible Products subject to Passport Advantage Terms. Such verification will be conducted in a manner that minimizes disruption to Customer's business, and may be conducted on Customer's premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

1.16.2 Resolution

IBM will notify Customer in writing if any such verification indicates that Customer has used any Eligible Product in excess of its authorized use or is otherwise not in compliance with the Passport Advantage Terms. Customer agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) software subscription and support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

1.17 Geographic Scope and Governing Law

1.17.1 Geographic Scope

The terms of this Agreement apply in countries in which 1) IBM markets its Eligible Products directly or 2) its Eligible Products have been announced as otherwise available.

1.17.2 Governing Law

The rights, duties, and obligations of each party are valid only in the country in which the transaction is performed or, if IBM agrees, the country where the Eligible Product is placed in productive use, except that all licenses are valid as specifically granted.

Both parties agree to the application of the laws of the country in which the transaction is performed to govern, interpret, and enforce all of Customer's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

2. Warranties

Unless IBM specifies otherwise, the following warranties apply only in the country of acquisition.

2.1 Warranty for IBM Programs

The warranty for an IBM Program is stated in its license agreement.

2.2 Warranty for IBM Software Subscription and Support and Selected Support

IBM warrants that it provides IBM Software Subscription and Support and Selected Support using reasonable care and skill.

2.3 Warranty for IBM Machine Components of IBM Appliances

IBM warrants that each IBM Machine Component is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine Component is a fixed period commencing on its Date of Installation (also called "Warranty Start Date") and specified in a Transaction Document. During the warranty period, IBM provides repair and exchange service for the IBM Machine Component, without charge, under the type of service IBM designates in a Transaction Document for the IBM Machine Component. If an IBM Machine Component does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to the party from whom Customer acquired it for a refund.

For an IBM Machine Component that IBM is responsible to install, if Customer elects to install the IBM Machine Component itself or have a third party install the IBM Machine Component, IBM may inspect the IBM Machine Component at Customer's expense before providing warranty service on the IBM Machine Component. If the IBM Machine Component is not in an acceptable condition for warranty service, as solely determined by IBM, Customer may request that IBM restore it to an acceptable condition for warranty service or Customer may withdraw its request for warranty service. IBM, at its sole discretion, will determine if restoration is possible. Restoration is provided as a billable service.

If the IBM Machine Component does not function as warranted during the warranty period, refer to the service documentation that shipped with the IBM Machine Component for support assistance and problem determination procedures.

If Customer is unable to resolve the problem with the service documentation, contact IBM or the reseller to obtain warranty service. Contact information for IBM is provided in the "Warranty Information" that ships with IBM Machine Component. If Customer does not register the IBM Machine Component with IBM, Customer may be required to present proof of purchase as evidence of Customer's entitlement to warranty service.

2.4 Warranty for IBM SaaS

The warranty for IBM SaaS is stated in the Terms of Use.

2.5 Extent of Warranty

THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, AND

FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

The warranties stated in Section 2.3 will not apply to the extent that there has been misuse (including, but not limited to, use of any Machine Component capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machine Components is voided by removal or alteration of Machine Components or parts identification labels.

Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of an Eligible Product or that IBM will correct all defects.

IBM will identify IBM Eligible Products that it does not warrant.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides non-IBM Eligible Products, **WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer.

3. Programs and Subscription and Support

To acquire additional authorizations to use Programs under this Agreement, Customer must have already acquired the Program code.

3.1 IBM Programs

IBM Programs acquired under this Agreement are governed by the terms of the IPLA.

3.1.1 Versions and Platforms:

Customer may use Programs and their associated user documentation in accordance with the terms of this Agreement in any commercially available national language version up to the level of use authorized in the PoE. Customer is authorized to use the Program(s) that Customer acquires under this Agreement on any platform or operating system for which IBM currently makes Program code available under this Agreement unless the Program is designated as platform or operating system specific at the time Customer acquired it.

3.1.2 IBM Trade-ups:

Licenses for certain Programs that replace qualifying IBM Programs may be acquired for a reduced charge. Customer agrees to terminate Customer's use of the replaced IBM Programs when Customer installs the replacement Programs.

3.1.3 Competitive Trade-ups:

Licenses for certain Programs that replace qualifying Non-IBM Programs may be acquired for a reduced charge. Customer agrees to terminate Customer's use of the replaced Non-IBM Programs when Customer installs the replacement Programs.

3.1.4 Money-back Guarantee

The IPLA's "money-back guarantee" only applies the first time Customer licenses the IBM Program. If an IBM Program license is for a Fixed Term that is subject to renewal, Customer may obtain a refund only if Customer returns the Program and its PoE within the first 30 days of its initial term. The IPLA's "money-back guarantee" does not apply to a Program Component of an Appliance.

3.1.5 Conflict between the Terms of this Agreement and those of the IPLA

If there is a conflict between the terms of this Agreement, including its Attachments and Transaction Documents and those of the IPLA, including its LI, the terms of this Agreement prevail. The IPLA and its LIs are available on the Internet at <http://www.ibm.com/software/sla>.

3.2 Programs in a Virtualization Environment

3.2.1 Authorizations

- a. A PoE must be acquired for the total number of PVUs associated with the Virtualization Capacity available to an Eligible Sub-Capacity Product.
- b. Prior to an increase in an Eligible Sub-Capacity Product's Virtualization Capacity, Customer must first acquire sufficient additional authorizations, including IBM Software Subscription and Support, if applicable, to cover that increase.

- c. IBM does not give credits or refunds for charges already due or paid if an Eligible Product's use falls below the authorized level of use.

3.2.2 IBM's Responsibilities

IBM will make available and authorize Customer to use:

- a. the ILMT at no charge, when ordered by Customer or Customer's IBM Reseller. IBM provides the ILMT to Customer for Customer's compliance with these Sub-Capacity Licensing terms; and
- b. the information center included with the ILMT to aid Customer's compliance with these Sub-Capacity Licensing terms.

Customer may make copies of the ILMT and information center for Customer's compliance with these Sub-Capacity Licensing terms.

3.2.3 Customer's Responsibilities under Sub-Capacity Licensing Terms

Customer agrees to:

- a. install and configure the most current version of ILMT in accordance with the ILMT information center, within 90 days of Customer's first Eligible Sub-Capacity Product deployment on an Eligible Virtualization Environment, to enable Customer to collect Virtualization Capacity data by Eligible Sub-Capacity Product and generate Audit Reports in accordance with these Sub-Capacity Licensing terms. Exceptions to this requirement are:

- (1) when ILMT does not yet provide support for the Eligible Virtualization Environment
- (2) if Customer's Enterprise has fewer than 1,000 employees and contractors, Customer is not a Service Provider, and Customer has not contracted with a Service Provider to manage Customer's Eligible Virtualization Environment
- (3) if the total physical capacity of Customer's Enterprise servers with an Eligible Virtualization Environment, measured on a Full Capacity basis, but licensed using sub-capacity terms is less than 1,000 PVUs.
- (4) when Customer's servers with Eligible Sub-Capacity Products are licensed to the Full Capacity of the servers

For these exceptions, use of ILMT, while recommended, is not required for Sub-Capacity Licensing. In lieu of ILMT, Customer is required to manually manage and track Customer's Eligible Virtualization Environment, and manually prepare Audit Reports documenting the Virtualization Capacity by Eligible Sub-Capacity Product for Customer's Eligible Virtualization Environment during each calendar or fiscal quarter. These Audit Reports must contain the information listed in the example Audit Report available at

<http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> . These Audit Reports must be prepared as frequently as is required to maintain a history of increases to Virtualization Capacity, but not less often than once per quarter, and must be maintained for at least two years to demonstrate ongoing compliance with these Sub-Capacity Licensing terms;

- b. promptly install new versions, releases, modifications, or code corrections ("fixes") of the ILMT that IBM makes available. Customer must subscribe to Tivoli Support notifications via <http://www.ibm.com/support/mynotifications> in order to be notified when these become available;
- c. not alter, modify, omit, delete, or otherwise misrepresent by any means, directly or indirectly, the:
 - (1) ILMT audit records;
 - (2) ILMT, except for changes provided by IBM; or
 - (3) Audit Reports that Customer submits to IBM.
- d. generate, using ILMT or manually, Audit Reports at least each calendar or fiscal quarter and retain for a period of not less than two years the Audit Reports and make these reports available to IBM upon notice as specified in Section 1.16. Failure to generate Audit Reports or make Audit Reports available to IBM will result in charging for Eligible Sub-Capacity Products under Full Capacity terms;
- e. assign a person in Customer's organization with authority to manage and promptly resolve any questions on Audit Reports or inconsistencies between Audit Report contents, license entitlement, or ILMT configuration;
- f. promptly place an order with IBM or Customer's IBM reseller if Audit Reports reflect Eligible Sub-Capacity Product use in excess of Customer's authorized level. IBM Software Subscription and

Support coverage will be determined to begin at the time Customer exceeded Customer's authorized level.

3.2.4 Additional Terms

Product deployments that are not able to meet these Sub-Capacity Licensing requirements must be licensed using Full Capacity terms.

3.3 Fixed Term Licensing

Fixed Term Licenses have a term that begins on the date that Customer's order is accepted by IBM; on the calendar day following the expiration of a prior Fixed Term; or on the calendar day following the Anniversary date, as applicable.

3.3.1 Automatic Renewal of Fixed Term Licenses

Customer may renew Customer's expiring Fixed Term License by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING FIXED TERM LICENSES ARE AUTOMATICALLY RENEWED FOR THE SAME DURATION AS THE EXPIRING TERM UNDER THE TERMS OF THIS AGREEMENT AND AT THE THEN CURRENT RENEWAL CHARGES FOR SUCH PROGRAM LICENSES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM CUSTOMER OR THROUGH CUSTOMER'S RESELLER, AS APPLICABLE, CUSTOMER'S WRITTEN NOTIFICATION THAT CUSTOMER DOES NOT WANT TO RENEW. CUSTOMER AGREES TO PAY SUCH RENEWAL CHARGES.

If Customer chooses not to renew the Fixed Term License, Customer agrees to discontinue use of the Program on the expiration date.

If, after the expiration date, Customer chooses to resume use of the Program, Customer must pay charges associated with an initial Fixed Term License rather than a Fixed Term License renewal.

3.3.2 Anniversary Coordination

For Fixed Terms of six months or more only, initial or subsequent Fixed Terms entered into on a date other than the Anniversary may be renewed at the next Anniversary for an additional period, at a prorated renewal charge, in order to extend the Fixed Term to the following Anniversary.

3.3.3 Withdrawal of Fixed Term License for a particular Program

If IBM withdraws Fixed Term licensing for a particular IBM Program, Customer understands that

- a. Customer may not renew the Fixed Term License for that IBM Program; and
- b. if Customer renewed the Fixed Term License for that IBM Program prior to the notice of withdrawal, Customer may either (a) continue to use the Program under the Fixed Term License terms until the end of the then current Fixed Term or (b) obtain a prorated refund.

3.4 CEO Product Categories

"CEO Product Categories" (groupings of Eligible Products) are acquired on a per-user basis. Customer must acquire Customer's first CEO Product Category ("Primary Product Category") for all CEO Users within Customer's Enterprise and for not less than the number of CEO Users specified in the CEO Product Categories Table at <http://www.ibm.com/software/passportadvantage>.

Customer may acquire additional CEO Product Categories if Customer meets the minimum number of CEO Users requirement specified in the CEO Product Category in the CEO Product Categories Table at <http://www.ibm.com/software/passportadvantage>. However, Customer need not acquire additional CEO Product Categories for all CEO Users within Customer's Enterprise.

A CEO User may use any or all of the Programs included in a chosen CEO Product Category. But all IBM Programs that are used for client access must be acquired from the same CEO Product Category as the server Program they access.

CEO Product Categories: Additions and Deletions

IBM may add Eligible Products to or delete Eligible Products from any CEO Product Category at any time. If IBM deletes an Eligible Product from a CEO Product Category, Customer may continue to use the deleted Eligible Product but Customer may not exceed the number of CEO Users enrolled prior to the deletion.

Increasing the number of CEO Users

In the event Customer increases the number of CEO Users, Customer must acquire an authorization to use the CEO Product Category for each new CEO User.

Decreasing the number of CEO Users

Customer will notify IBM in writing prior to Customer's next Anniversary in the event Customer's total number of CEO Users decreases. Decreases may result from a reorganization, restructuring, or sale of one or more of Customer's Sites. A reduction in the number of CEO Users of a temporary or seasonal nature does not qualify as a decrease. Following a decrease in the number of CEO Users, a lower SVP Level may result. If the level of authorized use of a CEO Product Category drops below the minimum number of CEO Users applicable to that CEO Category, Customer may not renew IBM Software Subscription and Support on a CEO Product Category basis.

3.5 Software Subscription and Support and Selected Support

3.5.1 Software Subscription and Support

- a. For purposes of this Agreement, "software subscription and support" means both IBM Software Subscription and Support and Third Party Software Subscription and Support. IBM provides IBM Software Subscription and Support with each IBM Program licensed under the IPLA. IBM Software Subscription and Support is a single offering not available as separate components. IBM does not provide IBM Software Subscription and Support for (i) Non-IBM Programs or for (ii) Programs that are licensed under the IBM License Agreement for Non-Warranted Programs (together "Selected Programs").
- b. IBM Software Subscription and Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.
- c. While IBM Software Subscription and Support is in effect for an IBM Program license:
 - (1) IBM will make available to Customer IBM Program defect corrections, restrictions, and bypasses, if any, that it develops.
 - (2) IBM will make available to Customer and authorize Customer to use the most current commercially available version, release, or update, should any be made available.
 - (3) IBM provides Customer assistance for Customer's i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions (together "Support"). Such Support for a particular version or release of an IBM Program is available only until IBM or the third party, as applicable, withdraws Support for that IBM Program's version or release. When Support is withdrawn, Customer must upgrade to a supported version or release of the IBM Program in order to continue to receive Support. The IBM "Software Support Lifecycle" policy is available at <http://www.ibm.com/software/info/supportlifecycle/>.
 - (4) IBM provides Support via electronic access and, if available, telephone, only to Customer's information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Customer's IBM support center. (This assistance is not available to Customer's end users.) IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Handbook for details at <http://www.ibm.com/software/support>.
 - (5) IBM may request that Customer allow it to remotely access Customer's system to assist Customer in isolating the software problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.
- d. IBM Software Subscription and Support does not include assistance for 1) the design and development of applications, 2) Customer's use of IBM Programs in other than their specified operating environment or 3) failures caused by products for which IBM is not responsible under this Agreement.

FOR THE AUTHORIZED USE OF EACH IBM PROGRAM INSTALLED AND IN SERVICE AT A CUSTOMER'S SITE, CUSTOMER HAS THE OPTION TO MAINTAIN IBM SOFTWARE SUBSCRIPTION AND SUPPORT FOR EITHER (a) ALL OF THE AUTHORIZED USE OR (b) NONE OF THE AUTHORIZED USE.

THERE IS NO OPTION FOR MAINTAINING IBM SOFTWARE SUBSCRIPTION AND SUPPORT COVERAGE FOR ONLY A PORTION OF AUTHORIZED USE INSTALLED AND IN SERVICE FOR AN IBM PROGRAM AT A CUSTOMER SITE.

CUSTOMER SHALL NOT USE ANY OF THE IBM SOFTWARE SUBSCRIPTION AND SUPPORT BENEFITS SPECIFIED IN SUBSECTION C OF THIS SECTION 3.5.1, INCLUDING THE APPLICATION OR USE OF ANY FIXES, UPDATES, OR UPGRADES, FOR IBM PROGRAMS FOR WHICH CUSTOMER HAS NOT FULLY PAID IBM SOFTWARE SUBSCRIPTION AND SUPPORT. IF CUSTOMER USES ANY OF THESE BENEFITS FOR WHICH IT HAS NOT FULLY PAID, THEN CUSTOMER AGREES TO ACQUIRE IBM SOFTWARE SUBSCRIPTION AND SUPPORT REINSTATEMENT SUFFICIENT TO COVER ALL SUCH UNAUTHORIZED USE OF SUCH BENEFITS AT THEN CURRENT APPLICABLE IBM PRICES.

3.5.2 Selected Support

Selected Programs eligible for Selected Support are listed at <http://www.ibm.com/lotus/PASupportedSupportPrograms>.

Selected Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.

While Selected Support is in effect for a Selected Program:

- a. IBM will make available to Customer Selected Program defect corrections, if any, that it develops.
- b. IBM provides Customer assistance for Customer's 1) routine, short duration installation and usage (how-to) questions; and 2) code related questions. Selected Support for a particular version or release of a Program is available only until IBM withdraws Selected Support for that Program's version, release, or modification. When such Selected Support is withdrawn, Customer must upgrade to a supported version or release of the Program in order to continue to receive such support. The IBM "Software Support Lifecycle" policy does not apply to Selected Support.
- c. IBM may provide Customer with assistance in designing and developing applications based on Customer's subscription level.
- d. IBM may provide assistance via electronic access and, if available, telephone, depending on Customer's location and the subscription level Customer acquires. Such assistance is provided only to Customer's information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Customer's IBM support center. Consult the IBM Software Support Handbook for details applicable to Selected Support at <http://www.ibm.com/software/support>.
- e. IBM may request that Customer allow it to remotely access Customer's system to assist Customer in isolating the software problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.

IBM does not provide licenses under this Agreement for Selected Programs.

3.5.3 Customer Data and Databases

To assist Customer in isolating the cause of a problem with a Program under either IBM Software Subscription and Support or Selected Support, IBM may request that Customer 1) allow IBM to remotely access Customer's system or 2) send Customer information or system data to IBM. IBM uses information about errors and problems to improve its products and services, and assist with its provision of related support offerings. For these purposes, IBM may use IBM entities and subcontractors (including in one or more countries other than the one in which Customer is located), and Customer authorizes IBM to do so.

Customer remains responsible for 1) any data and the content of any database Customer makes available to IBM, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Customer will not send or provide IBM access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that IBM may incur relating to any such information mistakenly provided to IBM or the loss or disclosure of such information by IBM, including those arising out of any third party claims.

3.5.4 Automatic Annual Renewal of Software Subscription and Support and Selected Support

Customer may renew Customer's expiring software subscription and support or Selected Support by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT AND SELECTED SUPPORT ARE AUTOMATICALLY RENEWED TO THE NEXT ANNIVERSARY UNDER THE TERMS OF THIS AGREEMENT AND AT THE THEN CURRENT RENEWAL CHARGES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM CUSTOMER OR THROUGH CUSTOMER'S RESELLER, AS APPLICABLE, CUSTOMER'S WRITTEN NOTIFICATION THAT CUSTOMER DOES NOT WANT TO RENEW. CUSTOMER AGREES TO PAY SUCH RENEWAL CHARGES.

Software subscription and support or Selected Support acquired or renewed on the Anniversary is renewable for an additional term of 12 full months.

Software subscription and support or Selected Support acquired on a date other than the Anniversary is renewable at the next Anniversary for an additional term of less than 12 full months for a pro-rated charge, thereby extending the coverage to the following Anniversary.

To reinstate any expired software subscription and support coverage, Customer must acquire IBM Software Subscription and Support Reinstatement or Third Party Software Subscription and Support Reinstatement, as applicable.

3.5.5 Withdrawal of Software Subscription and Support or Selected Support for a Particular Program

If IBM or the third party, as applicable, withdraws software subscription and support or Selected Support for a particular Program, Customer understands that

- a. IBM will not make software subscription and support renewal or Selected Support renewal available for that Program; and
- b. if Customer renewed IBM Software Subscription and Support for that IBM Program license or Selected Support for a Selected Program license prior to the notice of withdrawal, IBM may either continue to provide IBM Software Subscription and Support or Selected Support to Customer for that Program license until the end of the then current term or Customer may obtain a prorated refund. If Customer renewed Third Party Software Subscription and Support for that Non-IBM Program prior to the notice, the third party may continue to provide Third Party Software Subscription and Support to Customer for that Non-IBM Program license until the end of the then current term. If the third party does not do so, Customer may obtain a prorated refund.

4. Appliances

4.1 Virtual Appliance

Customer is licensed to use the Program(s) pursuant to the terms of this Agreement.

4.2 Appliances Comprising Both Program and Machine Components

IBM provides Appliances comprising both Program Components and Machine Components as a single product. Customer shall not use either such component independently of the Appliance of which it is a part for any purpose.

4.3 Program Components

Customer is licensed to use the Program Component(s) pursuant to the terms of this Agreement, but only on the Machine Component supplied by IBM or an authorized reseller or any replacement of a Machine Component provided to Customer by IBM or an authorized reseller. Customer may not transfer its license to use the Program Component(s) to another Enterprise.

4.4 Machine Components

4.4.1 Production Status

Each IBM Machine Component is manufactured from parts that may be new or used. In some cases, an IBM Machine Component may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms described in Part 2.3 apply.

4.4.2 Title and Risk of Loss

When Customer acquires a Machine Component directly from IBM, IBM transfers title to a Machine Component to Customer or, if applicable, Customer's lessor, upon payment of all the amounts due. For a feature, conversion, or another type of upgrade acquired for a Machine Component, IBM reserves transfer of title until IBM receives payment of all the amounts due and, as applicable, all removed parts, which become IBM's property.

For each Machine Component, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine Component will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, Customer must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

4.4.3 Installation

a. Machine Component Installation

- (1) Customer agrees to provide an environment meeting the requirements for the Machine Component as specified in its published documentation.
- (2) Customer is responsible for installing a Customer-set-up Machine Component and a non-IBM Machine Component according to instructions provided by IBM or the Machine Component's manufacturer.
- (3) For a Machine Component that IBM is responsible for installing, IBM has standard installation procedures. IBM will successfully complete these procedures before it considers a Machine Component (other than a Machine Component for which Customer defers installation or a Customer-set-up Machine Component) installed. For an IBM Machine Component that IBM is responsible to install, if the IBM Machine Component is not made available for IBM to install within six months from shipment, installation will be subject to an installation charge.

b. Upgrades and Engineering Changes

- (1) IBM sells Upgrades for installation on Machine Components, and, in certain instances, only for installation on a designated, serial-numbered Machine Component. Within 30 days of the shipment of an Upgrade, Customer agrees to install the Upgrade or, if IBM is responsible for the installation, to allow IBM to install the Upgrade. Certain Upgrade orders may be terminated at IBM's discretion if not made available for IBM to install within 30 days of shipment, in which case Customer must return the Upgrade at Customer's expense. In all cases, if the Upgrade is not made available for IBM to install within six months from the date IBM ships the Upgrade, installation will be subject to an installation charge.
- (2) Customer agrees to allow IBM to install mandatory Engineering Changes (such as those required for safety) on a Machine Component within 30 days of IBM's notice to Customer unless otherwise agreed to by the parties.

Many Upgrades and Engineering Changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the Upgrade or Engineering Change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install Upgrades and Engineering Changes and ii) transfer ownership and possession of removed parts to IBM. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance service status of the replaced part.

4.4.4 Machine Code Component

A Machine Code Component is licensed under the terms and restrictions of the Machine Code license agreement (e.g., IBM License Agreement for Machine Code, IBM Agreement for Licensed Internal Code, or an equivalent) provided with the Machine Code Component. Customer acceptance of the terms of this Agreement includes acceptance of IBM's Machine Code license agreements, current versions of which are available at the following URL:

http://www.ibm.com/servers/support/machine_warranties/support_by_product.html or by contacting an IBM representative. Machine Code license agreements may be amended by IBM from time to time. Such amended license terms will apply only to Machine Code Component that is supplied after such amended terms become effective.

A Machine Code Component is licensed only for use to enable a Machine Component to function in accordance with its Specifications and only for the capacity and capability for which Customer has acquired IBM's written authorization. Customer agrees to use the Machine Code Component only as specified in this Agreement and as may be further authorized or restricted in its applicable license agreement. Without limiting additional restrictions in the applicable license, Customer may not

- a. otherwise copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) the Machine Code Component, except as IBM may authorize in the Machine Component's user documentation or in writing to Customer;
- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the Machine Code Component unless expressly permitted by applicable law without the possibility of contractual waiver;
- c. sublicense or assign the license for the Machine Code Component; or
- d. lease the Machine Code Component or any copy of it.

International Business Machines Corporation, one of its subsidiaries, or a third party owns the Machine Code Component including all copyrights in the Machine Code Component and all copies of the Machine Code Component (this includes the original Machine Code Component, copies of the original Machine Code Component, and copies made from copies). The Machine Code Component is copyrighted and licensed (not sold).

Title will not be transferred when IBM supplies features, conversions, or upgrades that consist solely of Machine Code Component.

The capacity of certain Machine Components may be limited by technological measures in the Machine Code Component. Customer agrees to IBM's implementation of such technological measures to limit Machine Component capacity.

4.4.5 Delivery

Delivery dates for Appliances with Machine Components are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document.

5. IBM SaaS

Customer agrees that IBM is not providing it with access to the Internet in order to use IBM SaaS and that Customer remains responsible for Internet access.

Customer acknowledges that International Business Machines Corporation and its subsidiaries (1) do not control the transfer of data over telecommunications facilities, including the Internet, and (2) in a public Internet environment cannot commit to particular confidentiality obligations.

The exchange of any confidential information made under a separate, signed confidentiality agreement, pursuant to 1.14.5b of this Agreement, does not apply to Content. IBM assumes no confidentiality obligations regarding Content, notwithstanding the terms of any separate confidentiality agreement between Customer and IBM.

5.1 Ownership

IBM and its suppliers own IBM SaaS. Customer agrees that title to, ownership of and all rights in and to patents, copyrights, trademarks, and all other intellectual property rights in IBM SaaS, and any copy or part of IBM SaaS will remain with IBM and its suppliers. IBM may subcontract IBM SaaS, or any part of it, including technical support, to subcontractors selected by IBM.

5.2 Customer's Right to Use

Customer may use an IBM SaaS offering in accordance with its Terms of Use, up to the specified level of use authorized in the Proof of Entitlement, on condition that:

- a. Customer accepts the Terms of Use of the IBM SaaS offering;
- b. Customer ensures that anyone who uses the IBM SaaS offering does so only on Customer's behalf and complies with the terms of this Agreement and the applicable Terms of Use; and
- c. Customer does not
 - (1) use, copy, modify, or make the IBM SaaS offering available, in whole or on part, to third parties except as expressly permitted in this Agreement and the applicable Terms of Use;

- (2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the IBM SaaS offering, unless expressly permitted by applicable law without the possibility of contractual waiver;
- (3) use any of the IBM SaaS offering's components, files, modules, audio-visual content, or related licensed materials separately from that of the IBM SaaS offering;
- (4) rent, sublicense, or lease the IBM SaaS offering;
- (5) create Internet "links" to or from the IBM SaaS offering; or
- (6) "frame" or "mirror" any content forming part of an IBM SaaS offering, other than on Customer's own intranets in connection with Customer's authorized use of the IBM SaaS offering.

5.3 Subscription to IBM SaaS

5.3.1 Terms for a Specific IBM SaaS Offering

The terms of a specific IBM SaaS offering are provided in its Terms of Use and may include without limitation definitions, description of subscription and services, charge metrics, and restrictions.

5.3.2 IBM SaaS Subscription Period

An IBM SaaS Subscription Period begins on the date that IBM notifies Customer that Customer has access to the subscribed offering. The end date of a Subscription Period as specified in a Transaction Document is the last day of a month.

During an IBM SaaS Subscription Period, Customer may increase Customer's subscribed level of an IBM SaaS offering.

Customer may not decrease Customer's subscribed level of an IBM SaaS offering during a Subscription Period but may decrease in a subsequent Subscription Period.

5.3.3 IBM SaaS Subscription Period Renewal

Customer may renew an IBM SaaS offering at the end of a Subscription Period, unless otherwise specified in the offering's Terms of Use. Some IBM SaaS offerings, as specified in the IBM SaaS offering's Terms of Use or Transaction Document, automatically renew at the end of the Subscription Period unless, prior to the end of the Subscription Period, IBM receives, either directly or through Customer's reseller, as applicable, Customer's written notification not to renew.

5.4 IBM SaaS Technical Support

During an IBM SaaS Subscription Period:

- a. IBM provides assistance, as specified in the ToU, for Customer's offering-specific, task-oriented questions regarding the use of IBM SaaS; and
- b. IBM SaaS technical support is available only for the currently supported versions of IBM SaaS, client operating systems, Internet browsers, and software. IBM technical support is available during the normal business hours (published prime shift hours) of the IBM SaaS support center. Consult the Terms of Use for details applicable to a specific IBM SaaS offering.

5.5 Content

IBM provides only services for Content. IBM is not the publisher of Content transmitted within IBM SaaS.

Customer has sole responsibility for the following:

- a. ensuring the adequacy of any IBM SaaS elements to satisfy any Customer requirements;
- b. all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support;
- c. having all necessary authorizations to allow IBM and its subcontractors to host, cache, record, copy, and display Content, and Customer represents that it has and will keep in effect during its use of IBM SaaS all such authorizations and approvals necessary to grant IBM and its subcontractors these rights, and that such rights are provided at no charge to IBM. Customer retains all right, title, and interest in and to its Content; and
- d. the selection and implementation of procedures and controls regarding access, security, encryption, use, transmission, and backup and recovery of Content.

Customer grants to IBM and its subcontractors a nonexclusive, irrevocable, worldwide, royalty-free, fully-paid, transferable license to host, cache, record, copy, and display Content, solely for the purpose of making IBM SaaS available.

5.6 Termination of IBM SaaS

IBM may withdraw the IBM SaaS in its entirety on 12 months' written notice to all then current Customers by letter or e-mail.

Notwithstanding anything to the contrary in this Agreement, if IBM terminates Customer's access to the IBM SaaS due to Customer's breach of any of the applicable terms of this Agreement, IBM is not obligated to issue a refund or credit for any unused portion of IBM SaaS.

6. Reserved

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International Program License Agreement

Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, CLICKING ON AN "ACCEPT" BUTTON, OR OTHERWISE USING THE PROGRAM, LICENSEE AGREES TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF LICENSEE, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND LICENSEE TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, CLICK ON AN "ACCEPT" BUTTON, OR USE THE PROGRAM; AND
- PROMPTLY RETURN THE UNUSED MEDIA, DOCUMENTATION, AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM IT WAS OBTAINED FOR A REFUND OF THE AMOUNT PAID. IF THE PROGRAM WAS DOWNLOADED, DESTROY ALL COPIES OF THE PROGRAM.

1. Definitions

"Authorized Use" – the specified level at which Licensee is authorized to execute or run the Program. That level may be measured by number of users, millions of service units ("MSUs"), Processor Value Units ("PVUs"), or other level of use specified by IBM.

"IBM" – International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") – a document that provides information and any additional terms specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI can also be found in the Program's directory, by the use of a system command, or as a booklet included with the Program.

"Program" – the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, files, and modules, 3) audio-visual content (such as images, text, recordings, or pictures), and 4) related licensed materials (such as keys and documentation).

"Proof of Entitlement" ("PoE") – evidence of Licensee's Authorized Use. The PoE is also evidence of Licensee's eligibility for warranty, future update prices, if any, and potential special or promotional opportunities. If IBM does not provide Licensee with a PoE, then IBM may accept as the PoE the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom Licensee obtained the Program, provided that it specifies the Program name and Authorized Use obtained.

"Warranty Period" – one year, starting on the date the original Licensee is granted the license.

2. Agreement Structure

This Agreement includes **Part 1 - General Terms**, the LI, and the PoE and is the complete agreement between Licensee and IBM regarding the use of the Program. It replaces any prior oral or written communications between Licensee and IBM concerning Licensee's use of the Program. The terms of Part 2 may replace or modify those of Part 1. To the extent of any conflict, the LI prevails over both Parts.

3. License Grant

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants Licensee a nonexclusive license to 1) use the Program up to the Authorized Use specified in the PoE, 2) make and install copies to support such Authorized Use, and 3) make a backup copy, all provided that

- Licensee has lawfully obtained the Program and complies with the terms of this Agreement;
- the backup copy does not execute unless the backed-up Program cannot execute;
- Licensee reproduces all copyright notices and other legends of ownership on each copy, or partial copy, of the Program;
- Licensee ensures that anyone who uses the Program (accessed either locally or remotely) 1) does so only on Licensee's behalf and 2) complies with the terms of this Agreement;
- Licensee does not 1) use, copy, modify, or distribute the Program except as expressly permitted in this Agreement; 2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the

Program, except as expressly permitted by law without the possibility of contractual waiver; 3) use any of the Program's components, files, modules, audio-visual content, or related licensed materials separately from that Program; or 4) sublicense, rent, or lease the Program; and

- f. if Licensee obtains this Program as a Supporting Program, Licensee uses this Program only to support the Principal Program and subject to any limitations in the license to the Principal Program, or, if Licensee obtains this Program as a Principal Program, Licensee uses all Supporting Programs only to support this Program, and subject to any limitations in this Agreement. For purposes of this Item "f," a "Supporting Program" is a Program that is part of another IBM Program ("Principal Program") and identified as a Supporting Program in the Principal Program's LI. (To obtain a separate license to a Supporting Program without these restrictions, Licensee should contact the party from whom Licensee obtained the Supporting Program.)

This license applies to each copy of the Program that Licensee makes.

3.1 Trade-ups, Updates, Fixes, and Patches

3.1.1 Trade-ups

If the Program is replaced by a trade-up Program, the replaced Program's license is promptly terminated.

3.1.2 Updates, Fixes, and Patches

When Licensee receives an update, fix, or patch to a Program, Licensee accepts any additional or different terms that are applicable to such update, fix, or patch that are specified in its LI. If no additional or different terms are provided, then the update, fix, or patch is subject solely to this Agreement. If the Program is replaced by an update, Licensee agrees to promptly discontinue use of the replaced Program.

3.2 Fixed Term Licenses

If IBM licenses the Program for a fixed term, Licensee's license is terminated at the end of the fixed term, unless Licensee and IBM agree to renew it.

3.3 Term and Termination

This Agreement is effective until terminated.

IBM may terminate Licensee's license if Licensee fails to comply with the terms of this Agreement.

If the license is terminated for any reason by either party, Licensee agrees to promptly discontinue use of and destroy all of Licensee's copies of the Program. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

4. Charges

Charges are based on Authorized Use obtained, which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If Licensee wishes to increase its Authorized Use, Licensee must notify IBM or an authorized IBM reseller in advance and pay any applicable charges.

5. Taxes

If any authority imposes on the Program a duty, tax, levy, or fee, excluding those based on IBM's net income, then Licensee agrees to pay that amount, as specified in an invoice, or supply exemption documentation. Licensee is responsible for any personal property taxes for the Program from the date that Licensee obtains it. If any authority imposes a customs duty, tax, levy, or fee for the import into or the export, transfer, access, or use of the Program outside the country in which the original Licensee was granted the license, then Licensee agrees that it is responsible for, and will pay, any amount imposed.

6. Money-back Guarantee

If Licensee is dissatisfied with the Program for any reason and is the original Licensee, Licensee may terminate the license and obtain a refund of the amount Licensee paid for the Program, provided that Licensee returns the Program and PoE to the party from whom Licensee obtained it within 30 days of the date the PoE was issued to Licensee. If the license is for a fixed term that is subject to renewal, then Licensee may obtain a refund only if the Program and its PoE are returned within the first 30 days of the initial term. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

7. Program Transfer

Licensee may transfer the Program and all of Licensee's license rights and obligations to another party only if that party agrees to the terms of this Agreement. If the license is terminated for any reason by either party, Licensee is prohibited from transferring the Program to another party. Licensee may not transfer a portion of 1) the Program or 2) the Program's Authorized Use. When Licensee transfers the Program, Licensee must also transfer a hard copy of this Agreement, including the LI and PoE. Immediately after the transfer, Licensee's license terminates.

8. Warranty and Exclusions

8.1 Limited Warranty

IBM warrants that the Program, when used in its specified operating environment, will conform to its specifications. The Program's specifications, and specified operating environment information, can be found in documentation accompanying the Program (such as a read-me file) or other information published by IBM (such as an announcement letter). Licensee agrees that such documentation and other Program content may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation.

The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program, or that IBM will correct all Program defects. Licensee is responsible for the results obtained from the use of the Program.

During the Warranty Period, IBM provides Licensee with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. Consult the IBM Software Support Handbook for further information at <http://www.ibm.com/software/support>.

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, Licensee may return the Program and its PoE to the party (either IBM or its reseller) from whom Licensee obtained it and receive a refund of the amount Licensee paid. After returning the Program, Licensee's license terminates. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

8.2 Exclusions

THESE WARRANTIES ARE LICENSEE'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE.

THESE WARRANTIES GIVE LICENSEE SPECIFIC LEGAL RIGHTS. LICENSEE MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

THE WARRANTIES IN THIS SECTION 8 (WARRANTY AND EXCLUSIONS) ARE PROVIDED SOLELY BY IBM. THE DISCLAIMERS IN THIS SUBSECTION 8.2 (EXCLUSIONS), HOWEVER, ALSO APPLY TO IBM'S SUPPLIERS OF THIRD PARTY CODE. THOSE SUPPLIERS PROVIDE SUCH CODE WITHOUT WARRANTIES OR CONDITION OF ANY KIND. THIS PARAGRAPH DOES NOT NULLIFY IBM'S WARRANTY OBLIGATIONS UNDER THIS AGREEMENT.

9. Licensee Data and Databases

To assist Licensee in isolating the cause of a problem with the Program, IBM may request that Licensee 1) allow IBM to remotely access Licensee's system or 2) send Licensee information or system data to IBM. However, IBM is not obligated to provide such assistance unless IBM and Licensee enter a separate written agreement under which IBM agrees to provide to Licensee that type of technical support, which is beyond IBM's warranty obligations in this Agreement. In any event, IBM uses information about errors and problems to improve its products and services, and assist with its provision of related support

offerings. For these purposes, IBM may use IBM entities and subcontractors (including in one or more countries other than the one in which Licensee is located), and Licensee authorizes IBM to do so.

Licensee remains responsible for 1) any data and the content of any database Licensee makes available to IBM, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Licensee will not send or provide IBM access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that IBM may incur relating to any such information mistakenly provided to IBM or the loss or disclosure of such information by IBM, including those arising out of any third party claims.

10. Limitation of Liability

The limitations and exclusions in this Section 10 (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

10.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Licensee is entitled to recover damages from IBM. Regardless of the basis on which Licensee is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Program or otherwise arising under this Agreement will not exceed the amount of any 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) other actual direct damages up to the charges (if the Program is subject to fixed term charges, up to twelve months' charges) Licensee paid for the Program that is the subject of the claim.

This limit also applies to any of IBM's Program developers and suppliers. It is the maximum for which IBM and its Program developers and suppliers are collectively responsible.

10.2 Items for Which IBM Is Not Liable

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

- a. **LOSS OF, OR DAMAGE TO, DATA;**
- b. **SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**
- c. **LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

11. Compliance Verification

For purposes of this Section 11 (Compliance Verification), "IPLA Program Terms" means 1) this Agreement and applicable amendments and transaction documents provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (www.ibm.com/softwarepolicies/), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this Section 11 remain in effect during the period the Program is licensed to Licensee, and for two years thereafter.

11.1 Verification Process

Licensee agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Licensee's use of all Programs is in compliance with the IPLA Program Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Licensee is responsible for 1) ensuring that it does not exceed its Authorized Use, and 2) remaining in compliance with IPLA Program Terms.

Upon reasonable notice, IBM may verify Licensee's compliance with IPLA Program Terms at all sites and for all environments in which Licensee uses (for any purpose) Programs subject to IPLA Program Terms. Such verification will be conducted in a manner that minimizes disruption to Licensee's business, and may be conducted on Licensee's premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

11.2 Resolution

IBM will notify Licensee in writing if any such verification indicates that Licensee has used any Program in excess of its Authorized Use or is otherwise not in compliance with the IPLA Program Terms. Licensee agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

12. Third Party Notices

The Program may include third party code that IBM, not the third party, licenses to Licensee under this Agreement. Notices, if any, for the third party code ("Third Party Notices") are included for Licensee's information only. These notices can be found in the Program's NOTICES file(s). Information on how to obtain source code for certain third party code can be found in the Third Party Notices. If in the Third Party Notices IBM identifies third party code as "Modifiable Third Party Code," IBM authorizes Licensee to 1) modify the Modifiable Third Party Code and 2) reverse engineer the Program modules that directly interface with the Modifiable Third Party Code provided that it is only for the purpose of debugging Licensee's modifications to such third party code. IBM's service and support obligations, if any, apply only to the unmodified Program.

13. General

- a. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- b. For Programs IBM provides to Licensee in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Licensee and IBM.
- c. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
- d. Licensee agrees to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.
- e. Licensee authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Licensee's business contact information wherever they do business, in connection with IBM products and services, or in furtherance of IBM's business relationship with Licensee.
- f. Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement.
- g. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: 1) neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and 2) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.
- h. Neither Licensee nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
- i. No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for any third party claims against Licensee, except as permitted in Subsection 10.1 (Items for Which IBM May Be Liable) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- j. In entering into this Agreement, neither party is relying on any representation not specified in this Agreement, including but not limited to any representation concerning: 1) the performance or function of the Program, other than as expressly warranted in Section 8 (Warranty and Exclusions) above; 2) the experiences or recommendations of other parties; or 3) any results or savings that Licensee may achieve.
- k. IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Programs. IBM Business Partners remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or obligations they have to Licensee.

- I. The license and intellectual property indemnification terms of Licensee's other agreements with IBM (such as the IBM Customer Agreement) do not apply to Program licenses granted under this Agreement.

14. Geographic Scope and Governing Law

14.1 Governing Law

Both parties agree to the application of the laws of the country in which Licensee obtained the Program license to govern, interpret, and enforce all of Licensee's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

14.2 Jurisdiction

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license.

Exhibit K

IBM International Passport Advantage Agreement Attachment for Government Option

These terms modify or are in addition to those of the IBM International Passport Advantage Agreement ("the Agreement").

You accept the terms of this Attachment without modification by indicating you are enrolling under the Government Option when you submit an IBM International Passport Advantage Enrollment Form to IBM or your reseller, as applicable.

To participate in the Government Option under the Agreement, you must be an agency or affiliated entity

of either the U.S. Federal government or a state or local government. Under this Government Option Attachment to the Agreement, you receive special pricing due to your status as government and therefore other pricing and discounting mechanisms and procedures do not apply.

Section 5 - Relationship SVP Level of the Agreement does not apply under this Attachment.

Auditor GPC
WB

REQUEST TO ENCUMBER, ADD, LIQUIDATE FUNDS OR PAY CONTRACTOR

PART I: REQUEST FROM CONTRACTING DEPARTMENT

Contractor's Name: International Business Machines (IBM) Corp.

If Pay Contract-Remittance Address: _____

Contractor's Vendor ID: 13283 Master Contract #: n/a Procurement Contract #: 10790

Description of Contract: Electronic Forms Solutions software

Procurement Contract Begin Date: 9/23/2014 Expire Date: 9/22/2015

Elation Project Info: ☐ Sub-Contractor Compliance ☐ Labor Compliance

Board Waiver #: _____ GSA Waiver #: 3185

Federal Fund Waiver #: _____

A. ENCUMBER FUNDS IN A NEW PURCHASE ORDER

Date of Board Minute Order: 9/23/2014

File/Item/Contract Number: _____

Total Amount Authorized By Board: \$125,935.88

Amount to be Encumbered: \$125,935.88

Justification if partial encumbrance requested: _____

B. ADD FUNDS TO AN EXISTING PURCHASE ORDER

PO Number: _____

Date of Board Minute Order: _____

File/Item/Contract Number: _____

Total Amount Authorized By Board: _____

Amount to be Encumbered: _____

Justification if partial encumbrance requested: _____

C. LIQUIDATE FUNDS FROM A PURCHASE ORDER

Purchase Order Number: _____

Amount to be Liquidated: _____

Liquidation Justification: _____

D. PAY CONTRACTOR - ATTACH INVOICE

PO#: _____

PO Type: _____

Business Unit: _____

Voucher #: _____

Invoice #: _____

Amount Due \$: _____

Service Period: _____

Payment Handling: ☐ US Mail☐ Return to Department☐ CBAP Payment

Pay Comments: _____

Dept Claims Processor: _____

Dept. Claims Approver: _____

Authorized signatory below certifies that contractor has provided goods/services as invoiced and verifies the mathematical accuracy of the invoice; that all financial provisions of the contract have been met (including the rates charged); that all invoiced items are specifically authorized by the contract and no contract limits have been exceeded (in total, by month or by expense category).

ACCOUNTING INFORMATION

Business Unit	Account	Fund	Dept	Program	BY	Subclass	Proj/Grant	Amount
SOCSA	610292	10000	320100	30400	2015			\$125,935.88
Total								\$125,935.88

Send Response to: Muang Saechao QIC: 20203 Phone: 267-9447

Authorized Signature: _____ Department: SSA Contracts

Date: 9-9-14

Print Name of Authorized Signatory: Kathy Chien

PART II: RESPONSE FROM AUDITOR-CONTROLLER

☐ The Auditor-Controller encumbered _____ in a new PO. The PO Number is _____☐ The Auditor-Controller added _____ to PO Number _____☐ The Auditor-Controller liquidated _____ from PO Number _____☐ Contractor payment Approved ☐ Contractor payment Denied-Reason: _____☐ This form is being returned to you due to insufficient funds in the appropriation account.☐ The following information is needed before this request can be processed.

Signature of Contract Processor/Claims Approver _____

Date: _____

QUESTIONNAIRE FOR DETERMINING THE WITHHOLDING STATUS

INSTRUCTIONS: This questionnaire is to be completed by the County department for services contracts and must be included as part of the contract package. Be sure to answer all of the questions in Sections I and II and to complete the certifications on page 2. Sections III and IV contain supplemental questions to be answered for contractors in certain service categories.

CONTRACTOR NAME: International Business Machines (IBM) Corp DEPT #: SOCSA

TITLE/SERVICE: Electronic Forms Solutions

DEPT. CONTACT: Muang Saechao PHONE: 510-267-9447

I. INFORMATION ABOUT THE CONTRACTOR **YES NO**

1. Is the contractor a corporation or partnership? (X) ()
2. Does the contractor have the right per the contract to hire others to do the work agreed to in the contract? (X) ()
3. If the answer to BOTH questions is YES, provide the employer ID number here: 13-0871985
No other questions need to be answered. Withholding is not required.
4. If the answer to question 1 is NO and 2 is YES, provide the individual social security number here: _____
No other questions need to be answered. Withholding is not required.
5. If the answer to question 2 is NO, continue to Section II.

II. RELATIONSHIP OF THE PARTIES **YES NO**

1. Does the County have the right to control the way in which the work will be done, i.e., will the County be able to specify the sequence of steps or the processes to be followed if it chooses to do so? () ()
2. Is the contractor restricted from performing similar services for other businesses while he is working for the County? () ()
3. Will the contractor be working for more than 50% of the time for the County (50% = 20 hrs/wk; 80 hrs/mo)? () ()
4. Is the relationship between the County and the contractor intended to be ongoing? () ()

III. FOR CONSULTANTS, PROJECT MANAGERS, PROJECT COORDINATORS **YES NO**

1. Is the contractor being hired for a period of time rather than for a specific project? () ()
2. Will payment be based on a wage or salary (as opposed to a commission or lump sum)? () ()

IV. FOR PHYSICIANS, PSYCHIATRISTS, DENTISTS, PSYCHOLOGISTS **YES NO**

1. Will the agreement be with an individual who does not have an outside practice? () ()
2. Will the contractor work more than an average of ten hours per week?
IF THE ANSWER TO QUESTION 2 IS YES, ANSWER QUESTION 3. () ()
3. Will the County provide more than 20% of the contractor's income? () ()
4. If the answer to either question 2, or if required, question 3 is NO, the entire answer is NO.

A "YES" answer to any of the questions in Section II, or, if applicable, Sections III or IV constitutes justification for paying the contractor through the payroll system as an "employee for withholding purposes."

CERTIFICATIONS:

I hereby certify that the answers to the above questions accurately reflect the anticipated working relationship for this contract.

Devin F. Brown
Contractor Signature

Devin F. Brown
Printed Name

9/5/14
Date

Don R Edwards
Agency/Department Head/Designee
Signature

DON R EDWARDS
Printed Name

9-5-14
Date

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of 9/23/2014, is by and between the County of Alameda, hereinafter referred to as the "County", and International Business Machines (IBM) Corporation, hereinafter referred to as the "Contractor".

WITNESSETH

Whereas, County desires to obtain Electronic Forms Solutions services which are more fully described in Exhibit A hereto; and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to County; and

Now, therefore it is agreed that County does hereby retain Contractor to provide Electronic Forms Solutions services, and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- Exhibit A Definition of Services
- Exhibit B Payment Terms
- Exhibit C Insurance Requirements
- Exhibit D Debarment and Suspension Certification
- Exhibit E Contract Compliance Reporting Requirements
- Exhibit F IBM Customer Agreement
- Exhibit G IBM Agreement for Exchange of Confidential Information
- Exhibit H IBM International Passport Advantage Agreement
- Exhibit I IBM International Passport License Agreement
- Exhibit K IBM International Passport Advantage Agreement, Attachment for Government Option

The term of this Agreement shall be from September 23, 2014 through September 22, 2015.

The compensation payable to Contractor hereunder shall not exceed *one hundred twenty-five thousand nine hundred thirty-five dollars and eighty-eight cents (\$125,935.88)* for the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF ALAMEDA

CONTRACTOR/INTERNATIONAL
BUSINESS MACHINES (IBM)
CORPORATION

By: Keith Carson
Signature

By: Devin Brown
Signature

Name: KEITH CARSON
(Printed)

Name: Devin F. Brown
(Printed)

Title: President of the Board of Supervisors

Title: Client Executive, CA Public Sector

Date: 9/5/14

Approved as to Form:

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By: Victoria Wu
Print Name VICTORIA WU
County Counsel Signature

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such amounts.

In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of County.

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the County determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, County may upon two week's notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments

2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda, its Board of

Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

3. **INSURANCE AND BOND:** Contractor shall at all times during the term of the Agreement with the County maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Contractor's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Contractor's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Contractor's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self-insurance shall be called upon to protect it as a named insured.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar

character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.

5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the Contractor nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
6. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.
 - b. **Accidents:** If a death, serious personal injury or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.
 - c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.

7. **DEBARMENT AND SUSPENSION CERTIFICATION:** (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).
 - a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
 - b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
8. **PAYMENT:** For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.
9. **TRAVEL EXPENSES:** Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.
10. **TAXES:** Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.
11. **OWNERSHIP OF DOCUMENTS:** Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the County and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, respecting in any way the subject matter of this Agreement.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In Contractor's contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the County the aforesaid assignment and license rights as to that Contractor's Documents and Materials. Contractor agrees to defend, indemnify and hold the County harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the County harmless from any claims for infringement of patent or copyright arising out of such selection. The County's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the County by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the

performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.

13. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
Social Services Agency – Contracts Office
2000 San Pablo Ave. 4th Floor
Oakland, CA 94612
Attn: Muang Saechao

To Contractor: IBM Corporation
2710 Gateway Oaks Drive
South Building, Suite 200
Sacramento, CA 95833
Attn: Devin F. Brown

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective

as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. **USE OF COUNTY PROPERTY:** Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
15. **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:** Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
 - a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by the County, Contractor shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.

16. **DRUG-FREE WORKPLACE:** Contractor and Contractor's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement
17. **AUDITS; ACCESS TO RECORDS:** The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the County, make such books and records available to the County for inspection at a location within County or Contractor shall pay to the County the reasonable, and necessary costs incurred by the County in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to County for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three (3)

years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by County), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County's last payment to Contractor under this Agreement.

19. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. **TERMINATION:** The County has and reserves the right to suspend, terminate or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its Electronic Forms Solutions Services shall not exceed \$125,935.88 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.
21. **SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION:**

Contractor has been approved by County to participate in contract without SLEB participation (*SLEB waiver no. 3185, attached*). As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the contract should change, Contractor may be required to immediately comply with the County's Small and Emerging Local Business provisions, including but not limited to:

- a. Contractor must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).
- b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- c. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the contract. Contractor shall ensure that their own certification status and/or that of

participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.

- d. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
- e. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

County will be under no obligation to pay contractor for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor- Controller's Office of Contract Compliance (OCC) located at 1221 Oak St., Rm. 249, Oakland, CA 94612 at Tel: (510) 891-5500, Fax: (510) 272-6502 or via E-mail at ACSLEBcompliance@acgov.org.

- 22. **FIRST SOURCE PROGRAM:** For contracts over \$100,000, Contractor shall provide County ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Contractor has available during the contract term before advertising to the general public.
- 23. **CHOICE OF LAW:** This Agreement shall be governed by the laws of the State of California.
- 24. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- 25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall

constitute the entire agreement between County and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

26. HEADINGS herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
27. ADVERTISING OR PUBLICITY: Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance.
28. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. ASSURANCE OF PERFORMANCE: If at any time County believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the Services as required by this Agreement, County may request from Contractor prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
30. SUBCONTRACTING/ASSIGNMENT: Contractor shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's prior written approval.

- c. Contractor shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, including, without limitation, Exhibit C. Contractor shall verify subcontractor's compliance.
 - d. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.
- 31. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.
- 32. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
- 33. **PATENT AND COPYRIGHT INDEMNITY:** Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County's prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.
 - a. If Contractor is obligated to defend County pursuant to this Section 33 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with County's defense and/or settlement of such proceeding.

- b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.
 - c. Notwithstanding this Section 33, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
34. OTHER AGENCIES: Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.
35. EXTENSION: This agreement may be extended for two additional one year terms by mutual agreement of the County and the Contractor
36. SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

[END OF GENERAL TERMS AND CONDITIONS]

ADDITIONAL PROVISIONS

1. Governing Terms

The General Terms and Conditions do not apply to this contract.

The IBM Customer Agreement, this Additional Provisions to the Standard Services Agreement, Contract No. 10790, the IBM Agreement for Exchange of Confidential Information, the IBM Passport Agreement, and other Exhibits to the preceding documents shall be the only terms governing the rights and obligations between IBM and the County.

In the event of any inconsistency among these documents, the following order of precedence shall apply:

- 1) The Additional Provisions to the Standard Services Agreement, Contract No. 10790
- 2) Exhibit A, Definition of Services
- 3) The Statement of Work, if any
- 4) Exhibit F, The IBM Customer Agreement
- 5) Exhibit G, The IBM Agreement for Exchange of Confidential Information
- 6) All other Exhibits to the Standard Services Agreement, Contract No. 10790

2. Additional Terms and Conditions to the IBM Customer Agreement ("The Agreement")

- a. INDEPENDENT CONTRACTOR: No relationship of employer and employee is created by this Agreement; it being understood and agreed that IBM is an independent Contractor. IBM is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by IBM nor for any obligations or liabilities incurred by IBM.

IBM shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

- b. INDEMNIFICATION: To the fullest extent permitted by law, IBM shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all third party claims for damages for which IBM is legally liable to that third party, and

pay all costs, damages and attorneys' fees that a court finally awards or that are included in a settlement approved by IBM, provided that such third party claim is attributable to bodily injury, sickness, disease, death or to injury to or destruction of real property or tangible personal property, (collectively Liabilities") and further provide that the County shall promptly notify IBM in writing of the claim and allow IBM to control and will cooperate with IBM in the defense and any related settlement negotiations, except where such Liabilities are caused by any indemnitee or third party. The County may participate in the defense of any such claim at its own expense without relieving IBM of any obligation hereunder.

- c. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., IBM shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.
- d. **WORKERS' COMPENSATION:** IBM shall provide Workers' Compensation insurance, as applicable, at IBM's own cost and expense and further, neither the IBM nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
- e. **PAYMENT:** For services performed in accordance with this Agreement, payment shall be made to IBM as provided in Exhibit B hereto.
- f. **TRAVEL EXPENSES:** IBM shall not be allowed paid travel expenses unless set forth in this Agreement.
- g. **TAXES:** Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the IBM.
- h. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The IBM covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. IBM represents to and agrees with the County that to the best of its knowledge and belief IBM has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited

to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County. The parties agree that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential in accordance with the Agreement for Exchange of Confidential Information incorporated herein as Exhibit G.

- i. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox.

Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
Social Services Agency
2000 San Pablo Avenue 4th Floor
Oakland, California 94612
Attn: Muang Saechao

To IBM: IBM Corporation

2710 Gateway Oaks Drive
South Building, Suite 200
Sacramento, CA 95833
Attn: Devin Brown

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

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- j. **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:** IBM assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
- k. **DRUG-FREE WORKPLACE:** IBM and IBM's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither IBM nor IBM's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If IBM or any employee of IBM is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the IBM within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
- l. **AUDITS; ACCESS TO RECORDS:** The IBM shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by IBM.

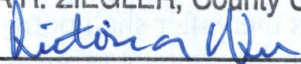
The IBM shall maintain full and adequate records in the performance of this Agreement. If such books and records are not kept and maintained by IBM within the County of Alameda, California, IBM shall, upon request of the County, make such books and records available to the County for inspection at a location within County. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the IBM shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and IBM with respect to this Agreement are closed, whichever is later. Nothing herein shall require IBM to disclosure cost, profit and overhead data, including both direct and indirect rates, markups, profit margins or confidential employee records and other trade secret information.

m. CHOICE OF LAW: This Agreement shall be governed by the laws of the State of California.

3. Exhibit E – Contract Compliance Reporting Requirements does not apply to this contract.

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By 

Print Name VICTORIA WU

County Counsel Signature: _____

OFFICE OF ACQUISITION POLICY (OAP) *ml*

3185 ✓

JUL 8 3 1900

REQUEST FOR AUTHORIZATION TO WAIVE SLEB PROGRAM REQUIREMENTS*

For **ALL Requests over \$3,000**: Complete 1-9 & 10 below (First Source) if over \$100,000, sign and print your name on line 11, submit hard copy with supporting documentation for approval to GSA-OAP Business Outreach Officer, QIC 26021 AND email soft copy (PDF or Word) to nakia.neal@acgov.org. Upon approval, the procurement will be processed by GSA Purchasing.

For **Requests over \$25,000**, a **SLEB Waiver Number** will be issued. This number is required to enter a Procurement Contract in ALCOLINK. OAP will email signed approvals (as appropriate, with Waiver Number) and denials to Requesting Departments, GSA Purchasing and Auditor Controller Office of Contract Compliance (OCC).

1. Please check appropriate box and complete department/contact information below.

☒ Requesting Department ☐ GSA Purchasing managing the competitive process
Department: AAF Contact: Jerome Graham Email: jgraham@acgov.org Telephone #: 510.645.9358

2. Recommended Non-SLEB Vendor (Name): International Business Machines Corporation

Street Address: PO Box 643600 City, State & Zip: Pittsburgh, PA 15264-3600

3. Total Contract Value: \$125,930.00 Contract Term Start Date: 7/23/14 End Date: 7/23/15 One-Time Purchase ☐

4. Procurement Type (check all appropriate boxes below):

☒ New Contract ☐ Renewal Contract ☐ Contract Amendment-Term ☐ Contract Amendment-Value ☐ Other: _____

5. Goods/Services Procurement Description: E-forms Software System and Services to install application and create eForms templates for SSIRS Data Warehouse

6. Brief explanation of why goods/services are required: The E-forms Software System and Services will allow SSA to leverage our existing Business Intelligence Data Warehouse to autopopulate electronic form clients will use to enroll and renew their Welfare benefits.

7. Date Goods/Services Needed: 7/23/14

a. What are the consequences if the date goods/services needed is not met? Social Services will not retain the discount on the purchase price, and will not be able to have clients enroll and renew their Welfare benefits electronically.

8. Explanation of why the non-SLEB contractor/subcontractor (in #2 above) is being recommended **and** why they are unable to subcontract with a SLEB(s) for a minimum of 20%: Proprietary software being used is the same as what the system was implemented

9. Explain what attempts were made to locate a SLEB prime or subcontractor(s), including:

- ☐ Copies of bids received and/or detailed statement of efforts made to contact and negotiate with certified businesses, including list of SLEBs contacted, names of individuals, addresses, phone numbers, dates contacted and bid prices **attached**
- List of items or selected portions of work proposed to be performed by certified business in order to increase the likelihood of achieving the stated goal: _____
- Description of information provided to certified contractors/subcontractors regarding the plans, specifications and anticipated time schedule for portions of the work to be performed: _____

10. If the contract is over \$100,000, is the recommended vendor able to comply with the First Source Program?

Yes: ☐ No: ☐ If No, explain: n/a

11. Department Certification: I certify to the accuracy of the preceding statements,

Signature of Agency/Department Head or Designee or GSA Purchasing Manager (if GSA Purchasing managed the process)

Print Name

Date

OAP to complete below:

A. Request Approved: ☒ Waiver Valid Through 9/22/15

SLEB Waiver Number:

3185

Reason: Sole Source

B. Request Denied: ☐

Reason: _____

Approved by GSA-Office of Acquisition Policy (Required)

Date

*Procurements using Federal grant funds that prohibit geographical preferences require the Federal Grant Funds SLEB Waiver Request form to be completed and submitted for approval to the Auditor-Controller OCC prior to soliciting bids/proposals and awarding contracts. See the Waiver Request Procedure for Federal Grant Funds Procurements in UPM (in the online County Document Center) for further information or contact the OCC at (510) 891-5500.

EXHIBIT A

DEFINITION OF SERVICES

1. Contractor shall provide Electronic Forms Solutions with the specific requirements and deliverables set forth on this Exhibit A.

A. The Contractor's proposal may be relied upon to interpret this Contract and shall be applied in such a manner so that the obligations of the Contractor are to provide the County with the broadest scope of services for the best value.

2. Activities

A. Activity One – Quickstart

Overview

During this activity, IBM will build the E-Forms infrastructure, confirm initial requirements for the forms application, and provide knowledge transfer to the technical resources.

Detail

During this activity, IBM will perform the following tasks:

- i. Build the IBM Forms infrastructure
- ii. Validate the hardware and software requirements have been met
 - a. Validate installation prerequisites (access control, install media)
 - b. Install and configure IBM Forms in Development environment (single node)
 - c. Install and configure IBM Forms in Production environment (single node)
 - d. Validate installation
- iii. Confirm initial requirements for forms application
 - a. Review forms to be converted
 - b. Identify validation rules
 - c. Identify data pre-population requirements
 - d. Identify external system integration requirements
 - e. Identify field types
 - f. Discuss authorization and authentication requirements
 - g. Discuss form selection and delivery mechanism
 - h. Discuss form save functionality
 - i. Discuss form submission functionality
 - j. Discuss form retrieval functionality
- iv. Provide knowledge transfer
 - a. Review location of on-line documentation

- b. Provide overview of system architecture
- c. Provide admin credentials for IBM Forms servers
- d. Review location of key admin tools and log files
- e. Provide overview of Forms Designer
- f. Demonstrate form conversion capabilities
- g. Provide best practices for forms-related servlet functionality

Completion Criteria

This activity will be considered complete when the following items are met:

- v. The IBM E-Forms environments have been built and validated
- vi. The available hours have been consumed

B. Activity Two – Forms Development Assistance

Overview

During this activity, IBM will assist with the conversion of existing forms to IBM E-Forms and development of required forms processing functionality.

Detail

During this activity, IBM will provide up to 80 hours to assist with the following tasks:

- i. Assist with conversion of existing forms (up to 5 forms is reasonable to complete in 40-60 hours)
 - a. Use IBM Forms Designer to convert PDF files of existing forms
 - b. Adjust form layouts
 - c. Adjust field types
 - d. Add required business logic
 - e. Add validation rules
 - f. Add data pre-population logic
- ii. Assist with development of required forms processing functionality (1 or 2 servlets should be completed with the remaining hours in this activity. Additional hours will likely be required to complete all tasks listed below.)
 - a. Integration with external systems
 - b. Integration with security managers
 - c. Develop servlet for form selection and delivery
 - d. Develop servlet for form save functionality
 - e. Develop servlet for form submission functionality
 - f. Develop servlet for form retrieval functionality

Completion Criteria

This activity will be considered complete when the following items are met:

iii. The available hours have been consumed

3. Assumptions

- a. Work under the finalized SOW will be performed at the County facility, except for any project related activity which IBM determines would be best performed on IBM premises in order to complete its obligations and responsibilities under the finalized SOW.
- b. IBM will provide the Services under the finalized SOW during normal business hours, [8:30 AM to 5:15 PM Monday through Friday], except holidays. If necessary, County will provide after-hours access to County facilities to IBM personnel. Out-of-town personnel may work hours other than those defined as normal business hours to accommodate their travel schedules.
- c. IBM may complete some of the tasks set forth in the finalized SOW by utilizing IBM subcontractors. IBM shall be responsible for the work performed by its subcontractors.
- d. Estimates for the work effort in this proposal are based on information gathered to date by IBM and not from a formal, and agreed to, detailed requirements engagement. The scope and timeframes may need to be adjusted
- e. County will provide appropriate, qualified resources as called for by the proposed activities.
- f. Delays in the availability of the resources may adversely affect the project and may result in additional cost to County. All additional costs will be agreed to between Contractor and County prior to any invoice or payment for such costs.
- g. County will provide the installation, configuration or testing of any hardware or software that is not in scope for this engagement.
- h. County will identify key stakeholders and contributors prior to the project's start date that will be available for participation during the proposed engagement duration.
- i. County is responsible to secure and provide all required licensed software, including IBM software. The County before the start of the project must acquire this software.
- j. County will assign a Project Manager to coordinate the County resources to work jointly with the IBM Project Manager to accomplish the proposed activities.

- k. County will provide the IBM team with access on an as-needed basis to internal infrastructure management.
 - l. Any changes to these assumptions may impact the cost and/or schedule of this project, and are managed through Project Change Control Procedures.
 - m. County will grant free access to its sites and Internet connections.
 - n. County will provide all hardware and software required for the solution.
 - o. County will identify a Forms Administrator and Lead Forms Developer to participate in knowledge transfer sessions (can be the same person).
 - p. County will provide hardware meeting the IBM Forms system requirements.
 - q. County will download the IBM Forms installation media and have it available on the target servers or via network accessible storage.
 - r. IBM will assign a Project Manager to oversee project logistics. In addition, the IBM Resource Manager will identify and assign the appropriate consultants.
 - s. IBM will engage and deploy resources for project commencement and implementation.
4. Contractor project team will consist of the following Key Personnel as applicable during the contract term:

IBM Team/Role	Description
ISSL U.S. Engagement Manager	Oversees the engagement from a Services delivery standpoint and maintains C-level relationship with County personnel as well as chairs joint ISSL/County Steering Committee.
ISSL Practice Delivery Manager	Owns specific Services delivery engagements; oversees ISSL Project Manager efforts; maintains County sponsor-level relationships.
ISSL Sales Specialist	Owns the sales relationship and is responsible for changes to existing contract or new contracts as required.
ISSL Solution Architect	Owns the engagement technical solution; oversees activities of the Delivery Architect and technical consulting team.
IBM Support and Development	ISSL is the only organization involved with Collaboration product delivery that has a direct line to the IBM Support and Development organizations.

Contractor agrees that it shall not transfer or reassign the individuals identified above as Key Personnel or substitute subcontractors without the express written agreement of County, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make a good faith effort to present to County an individual with greater or equal qualifications as a replacement subject to County's approval, which approval shall not be unreasonably withheld.

5. The approval of County to a requested change shall not release Contractor from its obligations under this Agreement.

EXHIBIT B-1

PAYMENT TERMS

1. County will use its best efforts to make payment to Contractor upon successful completion and acceptance of the following services listed in Exhibit A within thirty (30) days upon receipt and approval of invoice.
2. Invoices will be reviewed for approval by the County. Contractor shall submit all invoices and other documents as required to:

Social Services Agency
2000 San Pablo Ave., 4th Floor
Oakland, CA 94612
Attn: Jerome Graham

3. Total payment under the terms of this Agreement will not exceed the total amount of \$125,935.88. This cost includes all taxes and all other charges.
4. Upon award of this Agreement by County, County and Contractor shall forthwith jointly create a schedule governing the timely performance of Contractor's services hereunder. The agreed upon schedule shall be incorporated into this Agreement upon its adoption by the parties and thereafter Contractor shall perform all services under this Agreement in conformance with the schedule.
5. Upon notice to proceed from County, Contractor shall perform in accordance with all terms and conditions of this Agreement and Exhibits and Attachments.

EXHIBIT B-2**PRICE SCHEDULE**

Item / Part No.	Quantity	Unit Price	Extended Amount
IBM Forms Designer Authorized User License + SW Subscription & Support 12 Months 001 D56EFLL	3	\$404.46	\$1,213.38
IBM Forms Server Classic Processor Value Unit (PVU) License + SW Subscription & Support 12 Months 002 D10XYLL	280	\$241.26	\$67,552.80
IBM Forms Viewer Authorized User License + SW Subscription & Support 12 Months 003 D56E1LL	3	\$69.90	\$209.70
Subtotal			\$68,975.88

Staff	Activities Performed	Hours	Rate	Cost
Forms Specialist	This IBM Forms expert will lead all technical tasks for the IBM team.	160	\$255.00	\$40,800.00
Project Manager	This project manager will manage the IBM team in the field and work with the County project manager to coordinate activities.	32	\$255.00	\$8,160.00
Subtotal				\$48,960.00

Expense	Cost
Travel and Living Expenses: County will only be billed actual travel and living costs	\$8,000.00
Subtotal	\$8,000.00

Combined Subtotal: \$125,935.88
 Applicable sales tax: \$0
GRAND TOTAL: \$125,935.88

EXHIBIT C

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease
D	Endorsements and Conditions: ADDITIONAL INSURED: All insurance required above with the exception of Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies shall be primary insurance to any insurance available to the Indemnified Parties and Additional Insured(s). Pursuant to the provisions of this Agreement, insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by any one of the following methods: - Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured (covered party), or at minimum named as an "Additional Insured" on the other's policies. - Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured. CANCELLATION OF INSURANCE: All required insurance shall be endorsed to provide thirty (30) days advance written notice to the County of cancellation. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent to: - SSA Contracts Office: 2000 San Pablo Ave. 4th Floor, Oakland, CA 94612 - With a copy to Risk Management Unit (125 - 12th Street, 3rd Floor, Oakland, CA 94607)	



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/10/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

Aon Risk Services Northeast, Inc.
New York, NY
199 Water Street
New York, NY 10038-3551 USA

CONTACT**NAME:**

PHONE

(A/C, No, Ext)

FAX

(A/C, No):

E-MAIL**ADDRESS:****INSURER(S) AFFORDING COVERAGE****NAIC #**

INSURER A: ACE American Insurance Company

22667

INSURED

International Business Machines Corp.
& Any Other Subsidiary Corp. Owned or Controlled by the Insured
1 New Orchard Road
Armonk, NY 10504
United States

COVERAGES

CERTIFICATE NUMBER: 210304

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	X		HDO G27334556	5/21/2014	5/21/2015	EACH OCCURRENCE \$ \$5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ \$5,000,000 MED EXP (Any one person) \$ \$25,000 PERSONAL & ADV INJURY \$ \$5,000,000 GENERAL AGGREGATE \$ \$5,000,000 PRODUCTS - COMPROP AGG \$ \$5,000,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS	X		ISA H08820491	5/21/2014	5/21/2015	COMBINED SINGLE LIMIT (Ea accident) \$ \$5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	☐ UMBRELLA LIAB ☐ EXCESS LIAB DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Please see page 2 for any additional language.

CERTIFICATE HOLDER

COUNTY OF ALAMEDA- Social Services Agency
2000 San Pablo Ave.
4th Floor
Oakland, CA 94612
United States

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Authorized Representative:
Aon Risk Services Northeast, Inc.

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ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, Inc. New York, NY 199 Water Street New York, NY 10038-3551 USA	NAMED INSURED International Business Machines Corp. & Any Other Subsidiary Corp. Owned or Controlled by the Insured 1 New Orchard Road Armonk, NY 10504 United States
EFFECTIVE DATE: 5/21/2014	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

COUNTY OF ALAMEDA- Social Services Agency is hereby named as an additional insured on General Liability policy but only to the extent that their interest may appear.

COUNTY OF ALAMEDA- Social Services Agency , additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives are hereby named as additional insureds on Auto Liability policy but only to the extent that their interest may appear.

Project: Electronic Forms Solution Project

If there is a question regarding this certificate please contact Monica Davis
(Email: davisma@us.ibm.com Phone: 520-219-3271)

All operations incidental to the conduct of insured's business in the United States of America.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/9/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. 199 Water Street New York, NY 10038 Phone: 866.266.7475 Fax: 866.467.7847	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #:
INSURED International Business Machines Corp. 1 New Orchard Road Armonk, NY 10504 United States	INSURER(S) AFFORDING COVERAGE INSURER A: Liberty Mutual Fire Insurance Company INSURER B: LM Insurance Corp. INSURER C: National Union Fire Insurance Company of Pittsburgh, PA NAIC #

COVERAGES

CERTIFICATE NUMBER: 210290

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADOL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR ☐ GEN'L AGGREGATE LIMIT APPLIES PER. ☐ POLICY ☐ PRO-JECT ☐ LOC					EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DEDUCTIBLE RETENTION \$					EACH OCCURRENCE AGGREGATE
A B B B C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ No	N/A	EL6-621-004158-844 (VI) WAS-62D-004158-444 (AOS) ** WAS-62D-004158-674 (MN) WCS-621-004158-154 (WI) EWS-62N-004158-694 (Excess CH) 83-159626 (Guam)	1/1/2014 1/1/2014 1/1/2014 1/1/2014 1/1/2014 1/1/2014	1/1/2015 1/1/2015 1/1/2015 1/1/2015 1/1/2015 1/1/2015
						X WC STATUS- TORY LIMITS OTH- ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

** Includes EL coverage for monopolistic states ND, PR, WA, WY

** (AOS) = All Other States

Please see page 2 for any additional language.

CERTIFICATE HOLDERCOUNTY OF ALAMEDA- Social Services Agency
2000 San Pablo Ave.
4th Floor
Oakland, CA 94612
United States**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Authorized Representative:
Aon Risk Services Northeast, Inc.

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ACORD 25 (2009/09)

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Page 1 of 2



ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, Inc. 199 Water Street New York, NY 10038 Phone: 866.266.7475 Fax: 866.467.7847	NAMED INSURED International Business Machines Corp. 1 New Orchard Road Armonk, NY 10504 United States
EFFECTIVE DATE: 01/01/2014	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Project: Electronic Forms Solution Project

If there is a question regarding this certificate please contact Monica Davis
(Email: davisma@us.ibm.com Phone: 520-219-3271)

All operations incidental to the conduct of insured's business in the United States of America.

EXHIBIT D

COUNTY OF ALAMEDA

DEBARMENT AND SUSPENSION CERTIFICATION

(Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:

- **Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;**
- **Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;**
- **Does not have a proposed debarment pending; and**
- **Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.**

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR NAME: International Business Machines (IBM) Corporation

PRINCIPAL: Devin F. Brown **TITLE:** Client Executive, CA Public Sector

SIGNATURE:  **DATE:** 9/5/14

SAM Search Results
List of records matching your search for :

Search Term : international* business* machines*
Record Status: Active

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 835130485	+4:	CAGE Code: 3BXY7 DoDAAC:
Expiration Date: Jul 29, 2015	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 6710 ROCKLEDGE DRIVE		
City: BETHESDA	State/Province: MARYLAND	
ZIP Code: 20817-1834	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 119714236	+4:	CAGE Code: 15898 DoDAAC:
Expiration Date: Jul 11, 2015	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 1000 River St		
City: Essex Junction	State/Province: VERMONT	
ZIP Code: 05452-4201	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 084006741	+4:	CAGE Code: 2G381 DoDAAC:
Expiration Date: Apr 15, 2015	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 1101 Kitchawan Rd		
City: Yorktown Heights	State/Province: NEW YORK	
ZIP Code: 10598	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 183717651	+4:	CAGE Code: 15900 DoDAAC:
Expiration Date: Apr 15, 2015	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 650 HARRY RD		
City: SAN JOSE	State/Province: CALIFORNIA	
ZIP Code: 95120-6001	Country: UNITED STATES	

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 111410184	+4:	CAGE Code: 49EQ3 DoDAAC:
Expiration Date: Apr 15, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 800 N FREDERICK AVE City: GAITHERSBURG State/Province: MARYLAND ZIP Code: 20879-3326 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 790384072	+4:	CAGE Code: 1D185 DoDAAC:
Expiration Date: Apr 2, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 2070 Rte 52 City: HOPEWELL JUNCTION State/Province: NEW YORK ZIP Code: 12533-3507 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 933093676	+4:	CAGE Code: 526U1 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 6710 ROCKLEDGE DR City: BETHESDA State/Province: MARYLAND ZIP Code: 20817-1834 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 833239556	+4:	CAGE Code: 5VKA3 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 2300 DULLES STATION BLVD STE 200 City: HERNDON State/Province: VIRGINIA ZIP Code: 20171-6349 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 808190412	+4:	CAGE Code: 579A9 DoDAAC:
Expiration Date: Mar 20, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 11300 DR MARTIN LUTHER KING JR ST N STE 315 City: SAINT PETERSBURG State/Province: FLORIDA ZIP Code: 33716-2325 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 965588424	+4:	CAGE Code: 67FJ6 DoDAAC:
Expiration Date: Mar 20, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 310 STATE RTE 956 City: KEYSER State/Province: WEST VIRGINIA ZIP Code: 26726-0000 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 038253597	+4:	CAGE Code: 6E2D2 DoDAAC:
Expiration Date: Mar 20, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 299-300 LONG MEADOW RD City: STERLING FOREST State/Province: NEW YORK ZIP Code: 10979-0000 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 825382281	+4:	CAGE Code: 8W884 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 11107 Sunset Hills Rd Ste 500 City: Reston State/Province: VIRGINIA ZIP Code: 20190-5375 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 827671913	+4:	CAGE Code: 55E89 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 7095 SAMUEL MORSE DR STE 200 City: COLUMBIA State/Province: MARYLAND ZIP Code: 21046-3417 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 156472011	+4:	CAGE Code: 0K670 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 12902 FEDERAL SYSTEMS PARK DR City: FAIRFAX State/Province: VIRGINIA ZIP Code: 22033-4421 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 827822300	+4:	CAGE Code: 55P83 DoDAAC:
Expiration Date: Mar 19, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 6303 BARFIELD RD City: ATLANTA State/Province: GEORGIA ZIP Code: 30328-4233 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 060790131	+4:	CAGE Code: 1VZC6 DoDAAC:
Expiration Date: Mar 18, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 8123 S HARDY DR City: TEMPE State/Province: ARIZONA ZIP Code: 85284-1106 Country: UNITED STATES		

ENTITY	INTERNATIONAL BUSINESS MACHINES CORPORATION	Status:Active
DUNS: 078392668	+4:	CAGE Code: 3U1B1 DoDAAC:
Expiration Date: Mar 18, 2015 Has Active Exclusion?: No Delinquent Federal Debt?: No		
Address: 15036 CONFERENCE CENTER DR City: CHANTILLY State/Province: VIRGINIA ZIP Code: 20151-3848 Country: UNITED STATES		

SAM Search Results
List of records matching your search for :

Search Term : devin* brown*
Record Status: Active

No Search Results

EXHIBIT E

**COUNTY OF ALAMEDA
CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within 5 business days in the System, immediately enter payments made to subcontractors and ensure that subcontractors confirm they received payments within 5 business days in the System. Subcontractors shall confirm their payments received from the prime contractor within 5 business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County should schedule a representative from their office/company, along with each of their subcontractors, to attend training. The training schedule may be viewed online at http://www.elationsys.com/elationsys/support_1.htm or call Elation Systems at (925) 924-0340. A special access code will be provided to contractors and subcontractors participating in this contract awarded to allow use of the System free of charge.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.



Exhibit F

IBM Customer Agreement

This IBM Customer Agreement (called the "Agreement") governs transactions by which Customer purchases Machines, licenses ICA Programs, obtains Program licenses, and acquires Services (including, without limitation, customized development and support, business consulting, and maintenance Services) from International Business Machines Corporation ("IBM").

1. General Terms

1.1 Agreement Structure

This Agreement is organized in six Parts:

Part 1 – General Terms includes terms regarding Agreement Structure, Definitions, Acceptance of Terms, Delivery, Charges and Payment, Changes to Agreement Terms, IBM Business Partners, Intellectual Property Protection, Limitation of Liability, Compliance Verification, General Principles of Our Relationship, Agreement Termination, and Geographic Scope and Governing Law.

Part 2 – Warranties defines applicable Warranties for IBM Machines, ICA Programs, IBM Services, and Systems, and terms regarding Extent of Warranty.

Part 3 – Machines Terms includes Machine terms regarding Production Status, Title and Risk of Loss, and Installation.

Part 4 – Licenses for Machine Code and Other Internal Licensed Code includes the License for Machine Code and the License for Other Internal Licensed Code.

Part 5 – License for ICA Programs includes ICA Program terms regarding License, Distributed System License Option, Program Services, Compliance Verification, and License Termination.

Part 6 – Services Terms includes terms regarding Personnel, Materials Ownership and License, Customer Resources, Service for Machines (during and after warranty), Maintenance Coverage, Automatic Service Renewal, and Termination and Withdrawal of a Service.

1.2 Attachments and Transaction Documents

Additional terms for Products and Services are in documents called "Attachments" and "Transaction Documents" provided by IBM. In general, Attachments contain terms that may apply to more than one Product or Services transaction, while Transaction Documents (such as a statement of work, supplement, schedule, invoice, exhibit, change authorization, or addendum) contain specific details and terms related to each individual transaction. Customer may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

If there is a conflict among the terms of this Agreement, Attachments, and Transaction Documents, those of an Attachment prevail over those of this Agreement, and the terms of a Transaction Document prevail over those of both this Agreement and an Attachment.

1.3 Definitions

Authorized Built-in Capacity -- the Built-in Capacity for a Covered Machine that was Properly Acquired and Activated and is used in accordance with the AUT. For purposes of this definition, "Activated" means when IBM causes, directly or indirectly, the Authorized Built-in Capacity to be made available for Customer's use on a Covered Machine.

Authorized Use Table (AUT) -- the "IBM Authorized Use Table for Machines" that is provided at the following address: www.ibm.com/systems/support/machine_warranties/machine_code/aut.html and is in effect for a Covered Machine as of the acquisition date of the Covered Machine or, if there are one or more Machine Upgrades on the Covered Machine, then as of the acquisition date of the most recently acquired Machine Upgrade. The AUT is incorporated by reference into this Agreement.

Built-in Capacity -- the type and quantity of all resources and capabilities that IBM provides for a Machine, the access or use of which IBM has the ability to restrict by contract or Technological Measures. Built-In Capacity includes, without limitation, the type and quantity of the following: 1) processors, cores, processing capacity, processor performance setting and interactive processing capacity and capabilities; 2) memory; 3) storage; 4) cryptographic capability; 5) input/output ports, and 6) workload-specific resources and capabilities (including, for example, System z mainframe specialty processors such as

zIIPs, zAAPs and IFLs, and other limited purpose products (including "appliances"). Built-in Capacity is either Authorized Built-in Capacity or Unauthorized Built-in Capacity.

Circumvent -- to, directly or indirectly, by or through any means, alter, avoid, disrupt, subvert, go around, or otherwise interfere with.

Covered Machine -- the specific Machine (as identified by serial number or order number on a Transaction Document or other similar contract document issued by IBM) for which use of Machine Code is licensed. A Covered Machine that receives a Machine Upgrade remains a Covered Machine and a Machine that receives a Machine Upgrade becomes a Covered Machine.

Customer-set-up Machine -- an IBM Machine that Customer is responsible for installing according to instructions provided with it.

Date of Installation --

- a. for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;
- b. for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and
- c. for a Program --
 - (1) basic license, the second business day after the Program's standard transit allowance period,
 - (2) copy, the date (specified in a Transaction Document) on which IBM authorizes Customer to make a copy of the Program, and
 - (3) chargeable component (also called a feature), the date Customer uses the chargeable component or a copy. Customer agrees to notify IBM of the chargeable component's Date of Installation.

Designated Machine -- a Machine of a type specified in the Mainframe Exhibits provided at the following address: <http://www.ibm.com/systems/z/resources/swprice/reference/exhibits/hardware.html>.

Engineering Change -- an update to modify certain aspects of the design of an installed Machine, including without limitation the design of a certain Machine part or Machine Code.

Enterprise -- any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the Enterprise located in the United States.

IBM Machine -- a Machine bearing an IBM logo.

IBM Product -- an IBM Machine, ICA Program, or Other IBM Program.

ICA Program -- an IBM Program licensed under Part 5 of this Agreement.

Licensed Internal Code (called "LIC") -- another term for Machine Code commonly used for certain IBM product lines, such as for IBM System z Machines. LIC and Machine Code are interchangeable terms that have the same meaning.

Machine -- a hardware device, including its resources, capabilities, features, conversions, Machine Upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment).

Machine Code -- all of the following: (i) all code provided for an IBM Machine (including, without limitation, a Machine's firmware and microcode), excluding code that is licensed under a license agreement other than the license agreement governing use of Machine Code (for example, IBM operating system and middleware products); and (ii) records, data, and structures created, used or relied on by the code in item (i) (for example, IBM System z Machine LIC configuration control records and passwords that help restrict access or use of the code in item (i)). The term Machine Code specifically includes any whole or partial copy of Machine Code, and any fix, patch, or replacement provided for Machine Code.

Machine Upgrade -- the following changes that IBM sells for installation on a Machine: a hardware or Machine Code change to modify, add, remove, enable or disable certain Built-in Capacity or other resources and capabilities. Each such change can be accomplished through a Machine conversion, or through the conversion, addition, removal, or exchange of a Machine's feature(s).

Materials -- literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that IBM may deliver to Customer as part of a Service. The

term "Materials" does not include Programs, Machine Code, or other items available under their own license terms or agreements.

Non-IBM Program – a Program licensed under a separate third party license agreement.

Other IBM Program – an IBM Program licensed under a separate IBM license agreement (e.g., IBM International Program License Agreement).

Other Internal Licensed Code – code for a Covered Machine that is separately provided by IBM and licensed by a third party.

Product – a Machine or a Program.

Program – the following, including the original, any portion thereof, and all whole or partial copies:

- a. one or more sequences of instructions suitable for processing by a computer;
- b. control data (such as control blocks, event logs, configuration files) defined within or generated by the execution of such sequence(s) of instructions. Control data includes without limitation data that is designed to (i) manage or limit the operation of programs, or (ii) help monitor, record, manage, or limit the consumption of software or hardware resources, including, without limitation, data used in IBM's implementation of Technological Measures;
- c. components;
- d. audio-visual content (such as images, text, recordings, or pictures) defined within or generated by the execution of, such sequence(s) of instructions; and
- e. related licensed materials such as publications and other documentation.

The term "Program" includes any ICA Program, Other IBM Program, or Non-IBM Program, and any fix, patch or replacement that IBM may provide for a Program. The term does not include Machine Code or Materials.

Service – performance of a task, assistance, support, or access to resources (such as an information database) that IBM makes available to Customer.

Specifications – information specific to a Product. IBM Machine Specifications are in a document entitled "Official Published Specifications." ICA Program Specifications are in a document entitled "Licensed Program Specifications."

Specified Operating Environment – the Machines and Programs with which an ICA Program is designed to operate, as described in its Licensed Program Specifications.

Technological Measures – all means, methods, systems, processes, checks, tests, monitoring, validations, instruments, and other measures that IBM implements for the purpose of: (i) protecting, controlling, limiting, and restricting the use of Machine Code; (ii) protecting, controlling, limiting, and restricting the access to or use of Built-in Capacity (including, for clarity, both Unauthorized Built-in Capacity and Authorized Built-in Capacity); and (iii) monitoring and reporting use of the Machine Code, Authorized Built-in Capacity, and Unauthorized Built-In Capacity, including for the purpose of calculating usage-based charges for IBM Products. Without limiting the generality of the preceding sentence, Technological Measures may be implemented, in whole or in part, in Machine Code, IBM Programs, other code, other IBM technology, and in the data created, used or relied upon by such Machine Code, IBM Programs, other code, and IBM technology.

Unauthorized Built-in Capacity -- all Built-in Capacity for a Covered Machine other than Authorized Built-in Capacity. For example and for the avoidance of any doubt, each of the following is Unauthorized Built-In Capacity: (i) in the case of a processor authorized to operate at less than its full processor performance setting, the capability to operate the processor at a greater processor performance setting; and (ii) in the case of a System z Machine specialty processor, the capability to use the specialty processor for anything other than the "Authorized Uses" as such term is defined in the AUT.

1.4 Acceptance of Terms

Customer accepts the terms in Attachments and Transaction Documents by i) signing them (by hand or electronically), ii) using the Product or Service, or allowing others to do so, or iii) making any payment for the Product or Service.

A Product or Service becomes subject to this Agreement when IBM accepts Customer's order by i) sending Customer a Transaction Document, ii) shipping the Machine or making the Program available to Customer, or iii) providing the Service.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

1.5 Delivery

Delivery dates and ship dates are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document. For Programs IBM provides to Customer in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Customer and IBM.

1.6 Charges and Payment

1.6.1 Charges

A Transaction Document specifies the amount payable for Products or Services, based on one or more of the following types of charges: one-time, recurring, time and materials, or fixed price. Additional charges may apply (such as special handling or travel related expenses). IBM will inform Customer in advance whenever additional charges apply.

Recurring charges for a Product begin on its Date of Installation. Charges for Services are billed as specified in a Transaction Document, which may be in advance, periodically during the performance of the Service, or after the Service is completed. Unless otherwise provided in this Agreement (including any applicable Attachment or Transaction Document): i) Services for which Customer prepays must be used within the applicable contract period; and ii) IBM does not give credits or refunds for any prepaid or other charges already due or paid.

If a Transaction Document provides an estimated total charge for time and materials or for usage charges, the estimate is for planning purposes only. IBM invoices charges based on actual time and materials expended or Customer's actual or authorized use, subject to any specified minimum commitment.

1.6.2 Usage Charges

One-time and recurring charges may be based on measurements of actual or authorized use (for example, authorized capacity for Machines, number of users or processor size for Programs, or meter readings for maintenance Services). Customer agrees to provide actual usage data as described in an Attachment or Transaction Document.

If Customer makes changes to its environment that impact usage charges, Customer agrees to promptly notify IBM and pay any applicable charges. Recurring charges will be adjusted accordingly. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.

1.6.3 Changes to Charges

From time to time, IBM may change its charges. Customer receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.

Unless provided otherwise in an Attachment or Transaction Document, IBM may increase recurring charges for Products and Services, as well as labor rates and minimums for Services provided under this Agreement, by giving Customer three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date IBM specifies in the notice.

IBM may increase one-time charges without notice. However, an increase to one-time charges does not apply to Customer if i) IBM receives the order before the announcement date of the increase and ii) one of the following occurs within three months after IBM's receipt of the order:

- a. IBM ships Customer the Machine or makes the Program available to Customer;
- b. Customer makes an authorized copy of a Program or distributes a chargeable component of a Program to another Machine; or
- c. a Program's increased use charge becomes due.

1.6.4 Payment

Amounts are due upon receipt of invoice and payable within 30 days or as specified in a Transaction Document. Customer agrees to pay accordingly, including any late payment fee. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties.

1.6.5 Taxes

If any authority imposes upon any transaction under this Agreement a duty, tax, levy, or fee, excluding those based on IBM's net income, then Customer agrees to pay that amount as specified in an invoice, unless Customer supplies exemption documentation. Customer is responsible for any personal property

taxes for each Product from the date IBM ships it to Customer. For Programs that IBM delivers electronically to Customer and for which Customer claims a state sales and use tax exemption, Customer and IBM agree that no tangible personal property (e.g., media and publications) is transferred to Customer.

Additional taxes and tax related charges may apply if IBM personnel are required to perform Services outside their normal tax jurisdiction. As practical, IBM will work to mitigate such additional tax and tax-related charges and will inform Customer in advance if these additional charges apply and are payable by Customer.

1.7 Changes to the Agreement Terms

In order to maintain flexibility in our business relationship, IBM may change the terms of this Agreement by providing Customer at least three months' written notice. However, these changes are not retroactive. They apply, as of the effective date IBM specifies in the notice, only to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, Customer may request that IBM defer the change effective date until the end of the current contract period.

Customer acknowledges its agreement to have these changes apply for such transactions by i) placing new orders for Products or Services after the change effective date, ii) failing to request that the change effective date be deferred until the start of the next renewal period, iii) allowing transactions to renew after receipt of the change notice, or iv) failing to terminate non-expiring transactions prior to the change effective date. Changes to charges are implemented as described in the Charges and Payment section above.

Otherwise, for a change to be valid, both parties must sign it.

1.8 IBM Business Partners

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Products and Services. Customer may order Products or Services that are promoted or marketed to Customer by IBM Business Partners or other suppliers, however, i) this Agreement applies only if a Transaction Document subject to this Agreement is provided for the specific transaction, and ii) such Business Partners and suppliers remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or other suppliers, any obligations either has to Customer, or any products or services that they supply to Customer under their agreements.

1.9 Intellectual Property Protection

For purposes of this Intellectual Property Protection section, the term "Product" also includes Materials and Machine Code.

1.9.1 Third Party Claims

If a third party asserts a claim against Customer that an IBM Product that IBM provides to Customer under this Agreement infringes that party's patent or copyright, IBM will defend Customer against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved in advance by IBM, provided that Customer:

- a. promptly notifies IBM in writing of the claim;
- b. allows IBM to control, and cooperates with IBM in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with the Product's applicable license terms and Customer's obligations under section 1.9.2 (Remedies) below.

1.9.2 Remedies

If such a claim is made or appears likely to be made, Customer agrees to permit IBM, in IBM's discretion, either to i) enable Customer to continue to use the Product, ii) modify it, or iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, then on IBM's written request, Customer agrees to promptly return the Product to IBM and discontinue its use. IBM will then give Customer a credit equal to:

- a. for a Machine, Customer's net book value calculated according to generally-accepted accounting principles;

- b. for an ICA Program, the amount Customer paid IBM for the Program's license or 12 months' charges (whichever is less); and
- c. for Materials, the amount Customer paid IBM for the creation of the Materials.

1.9.3 Claims for Which IBM is Not Responsible

IBM has no obligation regarding any claim based on any of the following:

- a. anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. a Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, to the extent a claim could have been avoided by using the current release or version;
- c. any modification of a Product made by Customer or by a third party on Customer's behalf or the combination, operation, or use of a Product with any other Product, hardware device, program, data, apparatus, method, or process;
- d. the distribution, operation or use of a Product outside Customer's Enterprise;
- e. running or executing an ICA Program on other than a Designated Machine; or
- f. a non-IBM Product or an Other IBM Program.

This Intellectual Property Protection section states IBM's entire obligation and Customer's exclusive remedy regarding any third party intellectual property claims.

1.10 Limitation of Liability

1.10.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Product or Service or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of \$100,000 or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this Limitation of Liability section, the term "Product" also includes Materials and Machine Code.

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible. The following amounts are not subject to a cap on the amount of damages:

- a. payments referred to in the Intellectual Property Protection section above; and
- b. damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable.

1.10.2 Items for Which IBM Is Not Liable

Except as expressly required by law without the possibility of contractual waiver, under no circumstances is IBM, its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

- a. loss of, or damage to, data;
- b. special, incidental, exemplary, or indirect damages or for any economic consequential damages; or
- c. lost profits, business, revenue, goodwill, or anticipated savings.

1.11 Compliance Verification

Upon reasonable notice, IBM may verify the usage data and other information affecting the calculation of charges under this Agreement. Such verification will be conducted in a manner that minimizes disruption to Customer's business and may be conducted on Customer's premises, during Customer's normal business hours. Customer agrees to i) provide records, system tools outputs, and other electronic or hard copy system information reasonably necessary for such verification, and ii) promptly pay any additional, valid charges and other liabilities determined as a result of such verification.

IBM's right to verify Customer's usage data and other information affecting the calculation of charges also includes the right to verify Customer's compliance with all other terms of this Agreement (including

applicable Attachments and Transaction Documents). IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

Customer agrees to create, retain, and provide to IBM and its auditors written records, system tools outputs, and other system information sufficient to provide auditable verification that Customer's installation and running or executing ICA Programs complies with the Agreement terms, including IBM's applicable licensing and pricing terms. IBM will notify Customer in writing if any such verification indicates that Customer is not in compliance with Agreement terms. The rights and obligations in this section remain in effect during the period any ICA Programs are licensed to Customer and for two years thereafter.

1.11.1 Circumvention of Technological Measures

Customer will not (i) Circumvent or attempt to Circumvent any Technological Measures in an IBM Product or use a third party or third party product to do so, or (ii) in any way access, use, or attempt to access or use, Unauthorized Built-in Capacity.

1.12 General Principles of Our Relationship

1.12.1 Notices and Communications

Written communications, including notices to the receiving party's designated representative, are to be sent to the address (physical, e-mail or facsimile) specified in an applicable Attachment or Transaction Document. The parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

1.12.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments without obtaining Customer's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

Customer agrees not to resell any Service without IBM's prior written consent. Any attempt to do so is void.

Customer agrees to acquire each Machine with the intent to use it as designed and in the form it was sold within Customer's Enterprise and not for reselling, leasing, or transferring it, in whole or in part, to a third party, unless either of the following applies:

- a. Customer is arranging lease-back financing for the Machine; or
- b. Customer has paid IBM's list price or reference price, as applicable for the Machine, and does not remarket it in competition with IBM or IBM's authorized remarketers.

1.12.3 Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology Products and Services. IBM is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Products and Services that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular Products or Services under this Agreement meets the requirements of such laws. Neither party is obligated to take any action that would violate applicable law.

Each party will comply with all applicable export and import laws, regulations, and associated embargo and sanction regulations, including prohibitions on export for certain end uses or to certain end users.

1.12.4 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

1.12.5 Other Principles of Our Relationship

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Product or Service under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Each party grants only the licenses and rights specified in this Agreement. No other licenses or rights (including licenses or rights under patents) are granted either directly, by implication, or otherwise. The rights and licenses granted to Customer under this Agreement may be terminated if Customer fails to fulfill its applicable payment obligations.
- e. Customer agrees that IBM may process the business contact information of Customer's employees and contractors and information about Customer as a legal entity (contact information) in connection with IBM Products and Services or in furtherance of IBM's business relationship with Customer. This contact information can be stored, disclosed internally and processed by International Business Machines Corporation and its subsidiaries, Business Partners and subcontractors wherever they do business, solely for the purpose described above provided that these companies comply with applicable data privacy laws related to this processing. Where required by applicable law, Customer has notified and obtained the consent of the individuals whose contact information may be stored, disclosed internally and processed and will forward their requests to access, update, correct or delete their contact information to IBM who will then comply with those requests.
- f. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except as described in the Intellectual Property Protection section above or as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- g. Customer is responsible for selecting the Products and Services that meet its needs and for the results obtained from the use of the Products and Services, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- h. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.

1.13 Agreement Termination

Either party may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations under this Agreement, including any applicable Attachment or Transaction Document.

Either party may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply. License termination and termination of a Services transaction are described in Parts 5 and 6, respectively.

Any terms of this Agreement that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

1.14 Geographic Scope and Governing Law

The rights, duties, and obligations of each party are valid only in the United States except that all licenses are valid as specifically granted.

Both parties agree to the application of the laws of the State of New York to govern, interpret, and enforce all of Customer's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

2. Warranties

2.1 The IBM Warranties

2.1.1 Warranty for IBM Machines

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine is a fixed period, specified in a Transaction Document. For Machines, unless otherwise specified, the Date of Installation is the Warranty Start Date.

During the warranty period, IBM provides repair and exchange Service for the IBM Machine, without charge, under the type of Service IBM designates for the IBM Machine. If an IBM Machine does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to IBM for a refund.

Additional terms regarding Service for Machines during and after the warranty period are in Part 6.

2.1.2 Warranty for ICA Programs

IBM warrants that each warranted ICA Program, when used in the Specified Operating Environment, will conform to its Specifications.

During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted ICA Program for at least one year following its general availability. The warranty period for an ICA Program expires when its Program Services are no longer available.

If an ICA Program does not function as warranted during the first year after Customer obtains its license and IBM is unable to make it do so, Customer may return the ICA Program and the charges Customer paid for the license will be refunded. To be eligible, Customer must have obtained its license while Program Services (regardless of the remaining duration) were available for the ICA Program. Additional terms regarding Program Services are contained in Part 5.

2.1.3 Warranty for IBM Services

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

2.1.4 Warranty for Systems

When IBM specifies in an Attachment or Transaction Document that it is providing Products to Customer that are intended to operate together as a system, IBM warrants that those Products are compatible and, when installed in accordance with their Specifications, will operate with one another. This warranty is in addition to IBM's other applicable warranties.

2.2 Extent of Warranty

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies in place of these Machine warranties.

The warranties stated above will not apply to the extent that there has been misuse (including, but not limited to, use of any Unauthorized Built-in Capacity or Circumvention of Technological Measures), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machines is voided by removal or alteration of Machine or parts identification labels.

For a Machine that IBM is responsible to install, if Customer elects to install the Machine itself or have a third party install the Machine, IBM may inspect the Machine at Customer's expense before providing warranty Service on the Machine. If the Machine is not in an acceptable condition for warranty Service, as

solely determined by IBM, Customer may request that IBM restore it to an acceptable condition for Service or Customer may withdraw its request for warranty Service. IBM, at its sole discretion, will determine if restoration is possible. Restoration is provided as a billable Service.

THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

2.2.1 Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects.

IBM will identify IBM Machines and ICA Programs that it does not warrant.

IBM's Warranty for ICA Programs does not extend to an ICA Program that is run or executed on other than a Designated Machine.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides Materials, non-IBM Products (including those provided with, or installed on, an IBM Machine at Customer's request), and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements.

3. Machines Terms

3.1 Production Status

Each IBM Machine is manufactured from parts that may or may not be new. In some cases, a Machine may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms described in Part 2 apply.

3.2 Title and Risk of Loss

When IBM accepts Customer's order, IBM agrees to sell Customer the Machine described in a Transaction Document. IBM transfers title to Customer or, if applicable, Customer's lessor when the Machine is shipped to Customer or its designated location. However, IBM reserves a purchase money security interest in the Machine until IBM receives the amounts due. For a feature, conversion, or Machine Upgrade involving the removal of parts that become IBM's property, IBM reserves a security interest until IBM receives payment of all the amounts due and the removed parts. Customer authorizes IBM to file appropriate documents to permit IBM to perfect its security interest.

For each Machine, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, Customer must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

3.3 Installation

3.3.1 Machine Installation

Customer agrees to provide an environment meeting the requirements for the Machine as specified in its published documentation.

Within 30 calendar days of the shipment of a Machine, Customer agrees to install the Machine or, if IBM is responsible for the installation, to allow IBM to install the Machine. IBM has standard installation procedures. IBM will successfully complete these procedures before it considers an IBM Machine (other than a Machine for which Customer defers installation or a Customer-set-up Machine) installed. For a Machine that IBM is responsible to install, if the Machine is not made available for IBM to install within six months from shipment, installation will be subject to an installation charge.

Customer is responsible for installing a Customer-set-up Machine and a non-IBM Machine according to instructions provided by IBM or the Machine's manufacturer.

3.3.2 Machine Upgrades and Engineering Changes

IBM sells Machine Upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Within 30 calendar days of the shipment of a Machine Upgrade, Customer agrees to install the Machine Upgrade or, if IBM is responsible for the installation, to allow IBM

to install the Machine Upgrade. Certain Machine Upgrade orders may be terminated at IBM's discretion if not made available for IBM to install within 30 calendar days of shipment, in which case Customer must return the Machine Upgrade to IBM at Customer's expense. In all cases, if the Machine Upgrade is not made available for IBM to install within six months from the date IBM ships the Machine Upgrade, installation will be subject to an installation charge.

Customer agrees to allow IBM to install mandatory Engineering Changes (such as those required for safety) on a Machine within 30 calendar days of IBM's notice to Customer unless otherwise agreed to by the parties.

Many Machine Upgrades and Engineering Changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the Machine Upgrade or Engineering Change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install Machine Upgrades and Engineering Changes and ii) transfer ownership and possession of removed parts to IBM. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance Service status of the replaced part.

4. Licenses for Machine Code and Other Internal Licensed Code

Customer acknowledges that each Covered Machine contains Machine Code and may also contain Other Internal Licensed Code. Regardless of the source from which Customer acquires an IBM Machine, IBM's license terms regarding Machine Code and Other Internal Licensed Code included with the Machine apply.

4.1 License for Machine Code

Customer's use of Machine Code on a Covered Machine is governed by the terms of the applicable IBM License Agreement for Machine Code provided at

http://www.ibm.com/systems/support/machine_warranties/machine_code.html

4.2 License for Other Internal Licensed Code (OILC)

OILC is licensed under, and Customer's use is governed by, the terms of the applicable license agreement(s) for such OILC provided at:

http://www.ibm.com/servers/support/machine_warranties/support_by_product.html

5. License for ICA Programs

5.1 License

When IBM accepts Customer's order, IBM grants Customer a nonexclusive license to use the ICA Program only within Customer's Enterprise in the United States. ICA Programs are owned by International Business Machines Corporation, one of its subsidiaries, or a third party and are copyrighted and licensed (not sold).

5.1.1 Authorized Use

Under each license, IBM authorizes Customer to:

- a. run or execute the ICA Program only on the Designated Machine specified by the Customer to IBM under the terms of Section 5.1.2 below;
- b. use the ICA Program to the extent of authorizations Customer has obtained;
- c. solely in support of the level of use authorized by IBM, make and install copies of the ICA Program on the following: (i) the Designated Machine, and (ii) on an additional Designated Machine, for backup purposes, if the ICA Program is not performing productive work (including, without limitation, production, development, test, program maintenance, mirroring, etc.) on such additional Designated Machine; provided that Customer reproduces the copyright notices and any other legends of ownership on each copy or partial copy; and
- d. use any portion of the ICA Program IBM i) provides in source form, or ii) marks restricted (for example, marked "Restricted Materials of IBM") only to:
 - (1) resolve problems related to the use of the ICA Program, and
 - (2) modify the ICA Program so that, while not otherwise violating the terms of this Agreement, it will work together with other products.

5.1.2 Customer's Additional Obligations

For each ICA Program, Customer agrees to:

- a. provide its IBM representative with the type/model and serial number of the Designated Machine, and provide advance written notice and the effective date of any change from one Designated Machine to another Designated Machine;
- b. comply with any additional or different terms in its Licensed Program Specifications or another Attachment or Transaction Document;
- c. ensure that anyone who uses it (accessed either locally or remotely) does so only for Customer's authorized use and complies with IBM's terms regarding ICA Programs; and
- d. maintain a record of all copies and provide it to IBM at its request.

5.1.3 Actions Customer May Not Take

For each ICA Program, Customer agrees not to:

- a. modify the ICA Program except as IBM expressly allows in this Agreement;
- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the ICA Program unless expressly permitted by applicable law without the possibility of contractual waiver; or
- c. sublicense, assign, rent, or lease the ICA Program or transfer it outside Customer's Enterprise.

5.2 Distributed System License Option

For some ICA Programs, Customer may make a copy under a Distributed System License Option (called a "DSLO" copy). IBM charges less for a DSLO copy than for the original license (called the "Basic" license). In return for the lesser charge, Customer agrees to do the following while licensed under a DSLO:

- a. have a Basic license for the ICA Program;
- b. provide problem documentation and receive Program Services (if any) only through the location of the Basic license; and
- c. distribute to, and install on, the DSLO's Designated Machine, any release, correction, or bypass that IBM provides for the Basic license.

5.3 Program Services

IBM provides Program Services for warranted ICA Programs. If IBM can reproduce Customer's reported problem in the Specified Operating Environment, IBM will issue defect correction information, a restriction, or a bypass. IBM provides Program Services for only the unmodified portion of a current release of an ICA Program.

IBM provides Program Services i) on an on-going basis (with at least six months' written notice before IBM terminates Program Services), ii) until the date IBM specifies, or iii) for a period IBM specifies.

5.4 License Termination

Customer may terminate the license for an ICA Program at any time on 30 calendar days' written notice to IBM.

IBM may terminate Customer's license for an ICA Program if Customer fails to comply with:

- a. the terms of this Section 5,
- b. the license terms for Machine Code applicable to the Designated Machine to which the ICA Program is licensed, or
- c. Section 1.11 of this Agreement as such Section pertains to the ICA Program or the Designated Machine to which the ICA Program is licensed.

For each ICA Program license that Customer acquired for a one-time charge, a replacement license may be acquired for an upgrade charge, if available. When Customer obtains a license for such replacement ICA Program, the license of the replaced ICA Program is terminated when charges become due, unless IBM specifies otherwise.

If an ICA Program's license is terminated, Customer's authorization to use the ICA Program is also terminated.

Customer agrees to promptly destroy all copies of the Program after either party has terminated the license.

6. Services

6.1 Personnel

Each party will assign personnel that are qualified to perform the tasks required of such party under this Agreement and is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.

IBM may engage subcontractors to provide or assist in providing Services, in which case IBM remains responsible for the fulfillment of its obligations under this Agreement and for the performance of the Services.

6.2 Materials Ownership and License

An Attachment or Transaction Document will specify Materials to be delivered to Customer and identify them as "Type I Materials," "Type II Materials," or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

Customer will own the copyright in Materials created as part of a Service that are identified as "Type I Materials" and each such Material will constitute a "work made for hire" to the extent permissible under U.S. copyright law. If any such Materials are not works made for hire under applicable law, IBM assigns the ownership of copyrights in such Materials to Customer. Customer grants IBM an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.

IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within Customer's Enterprise only) copies of Type II Materials.

IBM or its suppliers retains ownership of the copyright in any of IBM's or its suppliers' works that pre-exist or were developed outside of this Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to Customer, if any, or otherwise as Type II Materials.

Each party agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this section.

6.3 Customer Resources

If Customer is making available to IBM any facilities, software, hardware or other resources in connection with IBM's performance of Services, Customer agrees to obtain any licenses or approvals related to these resources that may be necessary for IBM to perform the Services and develop Materials. IBM will be relieved of its obligations that are adversely affected by Customer's failure to promptly obtain such licenses or approvals. Customer agrees to reimburse IBM for any reasonable costs and other amounts that IBM may incur from Customer's failure to obtain these licenses or approvals.

Unless otherwise agreed in an Attachment or Transaction Document, Customer is responsible for i) any data and the content of any database Customer makes available to IBM in connection with a Service under this Agreement, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data. IBM's responsibilities regarding such data or database, including any confidentiality and security obligations, are governed by the Attachments and Transaction Documents applicable to the particular Services Transaction (which prevail over the terms of any separate confidentiality agreements) and subject to the Limitation of Liability and other terms in this Agreement.

6.4 Service for Machines (during and after warranty)

6.4.1 Service for Machines

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform Customer of the available types of Service for a Machine. At its discretion, IBM will i) either repair or exchange the failing Machine and ii) provide the Service either at Customer's location or a service center. IBM manages and installs selected Engineering Changes that apply to IBM Machines and may also perform preventive maintenance.

Any feature, conversion, or Machine Upgrade IBM Services must be installed on a Machine which is i) the designated, serial-numbered Machine, if applicable, and ii) at an Engineering-Change level compatible with the feature, conversion, or Machine Upgrade.

When the type of Service requires that Customer deliver the failing Machine to IBM, Customer agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will deliver it to Customer at IBM's expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, Customer's Machine while it is i) in IBM's possession or ii) in transit in those cases where IBM is responsible for the transportation charges.

Customer agrees:

- a. to obtain authorization from the owner to have IBM service a Machine that Customer does not own;
- b. where applicable, before IBM provides Service, to --
 - (1) follow the problem determination and service request procedures that IBM provides,
 - (2) secure all programs, data, and funds contained in a Machine, and
 - (3) inform IBM of changes in a Machine's location.
- c. to follow the Service instructions that IBM provides (which may include installing Machine Code and other software updates either downloaded from an IBM Internet Web site or copied from other electronic media); and
- d. when Customer returns a Machine to IBM for any reason --
 - (1) to securely erase from any Machine all programs not provided by IBM with the Machine and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data") and ii) Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
 - (2) to remove all funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that Customer returns to IBM; and
 - (3) IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

6.4.2 Replacements

When Service involves the exchange of a part or Machine, the item IBM replaces becomes IBM's property and the replacement becomes Customer's. Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a part or Machine, Customer agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. Customer also agrees to i) ensure that the part or Machine is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to IBM.

Service for some IBM Machines involves IBM providing Customer with an exchange replacement for installation by Customer. Such exchange replacements may be i) a part of a Machine (called a Customer Replaceable Unit, or "CRU," e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine. Customer may request IBM to install the replacement CRU or Machine, however, Customer may be charged for the installation. IBM provides information and replacement instructions with Customer's Machine and at any time on Customer's request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement, and Customer may be charged for the replacement if IBM does not receive the failing CRU or Machine within 15 calendar days of Customer's receipt of the replacement.

6.4.3 Items Not Covered

Repair and exchange Services do not cover:

- a. accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);

- b. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or a third party;
- c. Machines with removed or altered Machine or parts identification labels;
- d. failures caused by a product for which IBM is not responsible;
- e. service of Machine alterations; or
- f. service of a Machine on which Customer is using capacity or capability, other than that authorized by IBM in writing.

6.5 Warranty Service Upgrade

For certain Machines, Customer may select a Service upgrade from the standard type of warranty Service for the Machine. IBM charges for the Service upgrade during the warranty period.

Customer may not terminate the Service upgrade or transfer it to another Machine during the warranty period.

When the warranty period ends, the Machine will convert to maintenance Service at the same type of Service Customer selected for warranty Service upgrade.

6.6 Maintenance Coverage

When Customer orders maintenance Service for Machines, IBM will inform Customer of the date on which maintenance Service will begin. IBM may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, Customer may have IBM restore it for a charge or Customer may withdraw its request for maintenance Service. However, Customer will be charged for any maintenance Service that IBM has performed at Customer's request.

6.7 Automatic Service Renewal

Renewable Services renew automatically for a same length contract period unless either party provides written notification (at least one month prior to the end of the current contract period) to the other of its decision not to renew.

During an automatic renewal period, Customer may terminate the Service on one month's written notice, and IBM will provide Customer a prorated credit for any unused Services for which Customer has paid in advance.

6.8 Termination and Withdrawal of a Service

Either party may terminate a Service transaction if the other materially fails to meet its obligations concerning the Service.

Customer may terminate a Service, on notice to IBM provided Customer has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents.

For a maintenance Service, Customer may terminate without adjustment charge, provided any of the following circumstances occur:

- a. Customer permanently removes the eligible Product, for which the Service is provided, from productive use within Customer's Enterprise;
- b. the eligible location, for which the Service is provided, is no longer controlled by Customer (for example, because of sale or closing of the facility); or
- c. the Machine has been under maintenance Service for at least one year and Customer gives IBM one month's written notice prior to terminating the maintenance Service.

Customer agrees to pay IBM for i) all charges for Services IBM provides and any Products and Materials IBM delivers through Service termination, and ii) reimbursable expenses IBM incurs through Service termination. If Customer terminates without cause, Customer also agrees to pay any applicable adjustment or termination charges and for expenses IBM incurs as a result of such termination (which IBM will take reasonable steps to mitigate).

IBM may withdraw a Service or support for an eligible Product on three months' written notice to Customer. If IBM withdraws a Service for which Customer has prepaid and IBM has not yet fully provided it to Customer, IBM will give Customer a prorated refund.

Any terms that by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

This Agreement, including its applicable Attachments and Transaction Documents, is the complete agreement regarding transactions by which Customer purchases Machines, licenses ICA Programs, obtains Program licenses, and acquires Services from IBM, and replaces all prior oral or written communications, representations, understandings, warranties, promises, covenants, and commitments between Customer and IBM. In entering into this Agreement, including each Attachment and Transaction Document, neither party is relying on any representation that is not specified in this Agreement. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party accepts, on behalf of its Enterprise, the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Products and Services ordered under this Agreement are subject to it.

Agreed to:
County of Alameda, Social Services Agency

By Don R Edwards
Authorized signature

Title: ASSISTANT AGENCY DIRECTOR
Name (type or print): DON EDWARDS
Date: 9-5-14

Customer number:

Enterprise number:

Customer address: 2000 San Pablo Avenue, 4th Floor,
Oakland, CA 94612

Agreed to:
International Business Machines Corporation

By Devin F. Brown
Authorized signature

Title:
Name (type or print): Devin F. Brown
Date: 9/5/14
Agreement number:

IBM address: 2710 Gateway Oaks Drive, South
Building, Suite 200, Sacramento, CA 95833

Agreement for Exchange of Confidential Information

This Agreement for Exchange of Confidential Information (Agreement) provides protection for confidential information (Information) while maintaining each party's ability to conduct its respective business activities. Each party agrees that the following terms apply when one party (Discloser) discloses Information to the other (Recipient).

1. Disclosure

Information not marked with a restrictive legend of Discloser or disclosed orally must be identified as confidential at the time of disclosure.

Each disclosure of Information is subject to this Agreement for two years following the initial date of disclosure.

2. Obligations

Recipient agrees to use Information for the purpose for which it was disclosed or otherwise for the benefit of Discloser, and not to intentionally disclose Information other than to the following:

- a. Recipient's employees and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. Control means to own or control, directly or indirectly, over 50% of voting shares;
- b. subcontractors, financial and legal advisors, and then only to those who have a need to know; or
- c. any other party with Discloser's prior written consent.

Before disclosure to any party in (a) – (c), Recipient will have a written agreement with such party sufficient to require that party to treat Information substantially the same as described in this Agreement.

If required to disclose Information by law or court order, Recipient will endeavor to give Discloser prompt notice to allow Discloser a reasonable opportunity to obtain a protective order.

3. Disclaimers

DISCLOSER PROVIDES INFORMATION WITHOUT WARRANTIES OF ANY KIND and is not liable for any damages arising out of Recipient's use of Information disclosed under this Agreement.

This Agreement does not require either party to disclose or to receive Information, perform any work, or enter into any license, business engagement or other agreement. Neither this Agreement nor any disclosure of Information made under it grants Recipient any right or license under any trademark, copyright or patent, now or subsequently owned or controlled by Discloser. The exchange of Information under this Agreement does not create any joint or fiduciary relationship, or authorize either party to act or speak on behalf of the other.

The receipt of Information under this Agreement does not in any way preclude Recipient from:

- a. developing, manufacturing, marketing or providing to others products or services which may be competitive with products or services of Discloser;
- b. assigning its employees in any way it may choose; or
- c. entering into any business relationship with any other party or developing, manufacturing, marketing or providing products or services to others who compete with the Discloser.

Any Information regarding Discloser's future products or services is subject to change or withdrawal without notice. The development, release, and timing of any future features or functionality described for Discloser's products and services remains at Discloser's sole discretion.

Recipient may disclose, disseminate, and use Information that is already in its possession which was received by Discloser without obligation of confidentiality, developed independently, obtained from a source other than Discloser without obligation of confidentiality, publicly available when received or subsequently becomes publicly available through no fault of the Recipient, or disclosed by Discloser to another without obligation of confidentiality.

4. General

- a. **Assignment.** Neither party may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent. Any attempt to do so is void.
- b. **Termination.** Either party may terminate this Agreement by providing at least one month's written notice to the other. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.
- c. **Modification.** Only a written agreement signed by both parties can modify this Agreement.
- d. **Choice of Law.** Both parties agree to the application of the laws of the State of New York to govern, interpret, and enforce all of the parties' respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.
- e. **Import/Export Compliance.** Each party will comply with all applicable export and import laws and associated embargo and economic sanction regulations, including those of the United States, that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.

This Agreement, including its applicable supplements, is the complete agreement regarding the exchange of Information, and replaces all prior oral or written communications, representations, warranties, covenants, and commitments between Company and IBM regarding the exchange of Information. In entering into this Agreement, including each supplement, neither party is relying on any representation not specified in this Agreement or the applicable supplement. Additional or different terms in any written communication from Company are void.

Each party accepts the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this Agreement or a supplement made by reliable means is considered an original and ii) all disclosures of Information under this Agreement are subject to it.

Agreed to:

County of Alameda, Social Services Agency

By Don R Edwards

Authorized Signature

Name (type or print): DON R EDWARDS

Date: 9-5-14

Identification number:

Address: 2000 San Pablo Avenue, 4th Floor,
Oakland, CA 94612

Agreed to:

International Business Machines Corporation ("IBM")

By Devin F. Brown

Authorized Signature

Name (type or print): Devin F. Brown

Date: 9/5/14

Agreement number:

IBM address: 2710 Gateway Oaks Dr., South Building,
Suite 200, Sacramento, CA 95833

International Passport Advantage Agreement

This IBM International Passport Advantage Agreement ("Agreement") governs transactions by which Customer acquires Eligible Products. Customer Originating Company and IBM Originating Company agree to coordinate the administration of this Agreement within their respective Enterprises. This Agreement is entered into with the understanding that both Customer Originating Company and IBM Originating Company are bound by its terms. Both Customer Originating Company and IBM Originating Company agree to distribute copies of this Agreement to their respective participating Enterprise companies. The Customer Originating Company is responsible for all Sites' compliance with the terms of this Agreement.

This Agreement, including any applicable Attachments, Terms of Use, and any Transaction Documents is the complete agreement regarding transactions by which Customer acquires Eligible Products, and replace any prior oral or written agreements, communications, representations, statements, understandings, warranties, promises, covenants, commitments, or undertakings between Customer and IBM concerning Passport Advantage.

If there is a conflict among the terms of this Agreement, Attachments, Terms of Use, and Transaction Documents, those of an Attachment prevail over those of this Agreement, those of Terms of Use prevail over those of an Attachment and this Agreement, and the terms of a Transaction Document prevail over those of this Agreement, the Terms of Use, and an Attachment.

Once this Agreement is accepted, 1) unless prohibited by applicable law or specified otherwise, any reproduction of it or a Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and 2) all Eligible Products ordered under this Agreement are subject to it.

1. General

1.1 Agreement Structure

This Agreement is organized in six Parts:

Part 1 – General includes terms regarding Agreement Structure, Attachments and Transaction Documents, Definitions, Acceptance of Terms, Delivery, Payment, Taxes, RSVP Level, Changes to Agreement Terms, Eligible Products, IBM Business Partners and Resellers, Intellectual Property Protection, Limitation of Liability, General Principles of Our Relationship, Agreement Termination, Compliance Verification, and Geographic Scope and Governing Law.

Part 2 – Warranties includes terms regarding Warranty for IBM Programs, Warranty for IBM Software Subscription and Support and Selected Support, Warranty for IBM Machine Components of IBM Appliances, Warranty for IBM SaaS, and Extent of Warranty.

Part 3 – Programs and Subscription and Support includes terms regarding IBM Programs, Programs in a Virtualization Environment, Fixed Term Licensing, CEO Product Categories, and Software Subscription and Support and Selected Support.

Part 4 – Appliances includes terms regarding Virtual Appliance, Appliances Comprising Both Program and Machine Components, Program Components and Machine Components.

Part 5 – IBM SaaS includes terms regarding Ownership, Customer's Right to Use, Subscription to IBM SaaS, IBM SaaS Technical Support, Content, and Termination of IBM SaaS.

Part 6 – Reserved.

1.2 Attachments and Transaction Documents

Additional terms for Eligible Products are in documents called "Attachments" and "Transaction Documents" provided by IBM. Depending upon their country of use, Attachments may have different names. In general, Attachments contain terms that may apply to more than one transaction, while Transaction Documents (such as a supplement, schedule, invoice, exhibit, or addendum) contain specific details and terms related to an individual transaction. Customer may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

1.3 Definitions

Additional Site – any Site that subsequently enrolls under this Agreement.

Anniversary – the first day of the month that follows the anniversary of the Effective Date, unless the Effective Date is the first day of a month, in which event the anniversary of the Effective Date is the Anniversary.

Appliance – an Eligible Product, designed for a particular function and not for general purpose computing tasks, that may be a Program (in the case of a “Virtual Appliance”) or composed of a Program Component, a Machine Component, and any Machine Code Component that IBM may provide to Customer.

Audit Reports – a set of reports available in the IBM License Metric Tool (“ILMT”), or by another method acceptable to IBM as specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> . These reports provide the Processor Value Unit (“PVU”) license requirements based on the Virtualization Capacity available to the Eligible Sub-Capacity Product.

CEO User – an individual to whom a machine has been assigned that is capable of copying, using, or extending the use of Programs in a CEO Product Category.

Content – information, software, and data, including, without limitation, any Personal Data, hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets, or servlets that are created, provided, uploaded, or transferred by Customer and any user authorized by Customer.

Customer – the customer Enterprise company that is ordering Eligible Products.

Customer Originating Company – the legal entity within Customer's Enterprise of which the entity that identifies itself as the “Originating Site” on an “IBM International Passport Advantage Enrollment Form” is a part.

Customer-set-up Machine Component – an IBM Machine Component that Customer is responsible for installing according to instructions provided with it.

Date of Installation –

- a. for a Customer-set-up Machine Component, the date on Customer's purchase invoice or sales receipt for the Appliance is the Date of Installation, unless IBM or Customer's IBM reseller informs Customer otherwise.
- b. for an IBM Machine Component that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;

Effective Date – the date IBM accepts Customer's initial order for Eligible Products, either directly from Customer or from Customer's reseller.

Eligible Operating System Technology – an operating system for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Eligible Processor Technology – a processor technology for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Eligible Products – commercially available IBM Programs, Non-IBM Programs, Selected Support, authorizations to increase Customer's use of a Program, IBM Trade-ups, Competitive Trade-ups, Annual IBM Software Subscription and Support Renewals, IBM Software Subscription and Support Reinstatement, Annual Third Party Software Subscription and Support Renewals, Third Party Software Subscription and Support Reinstatement, Selected Support renewals, IBM SaaS, and Appliances.

Eligible Sub-Capacity Product – a Product for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Eligible Virtualization Environment – a server or a group of servers cooperating as a single computing entity that contain an Eligible Processor Technology, an Eligible Operating System Technology, and an Eligible Virtualization Technology.

Eligible Virtualization Technology – a virtualization technology for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> . An Eligible Virtualization Technology is capable of restricting processor capacity to a subset of the total physical capacity, sometimes referred to as partition, LPAR, or virtual machine.

Engineering Change – an update to modify certain aspects of the design of an installed Machine Component, including without limitation the design of a certain Machine Component part(s) or Machine Code Component.

Enterprise – any legal entity that, by more than 50%, owns, is owned by, or is under common ownership with the Originating Company.

Fixed Term – a definite period of time specified by IBM in a Transaction Document, for example, in a Program's PoE.

Full Capacity – The total number of physical processor cores activated and available for use on a server.

IBM – the IBM Enterprise company that is providing Eligible Products.

IBM Business Partner – an organization with which IBM has signed agreements to promote, market, and, in some instances, support certain Eligible Products.

IBM Machine Component – a Machine Component bearing an IBM logo.

IBM Originating Company – the legal entity within International Business Machines Corporation's Enterprise that accepts the Customer Originating Company's orders.

IBM Program – a Program acquired under this Agreement and subject to the IPLA, including its LI.

IBM Software as a Service ("IBM SaaS") – offerings IBM makes available to Customer remotely through the Internet providing access to (i) functionality of Programs, (ii) infrastructure, and (iii) technical support. IBM SaaS is not a Program but may require Customer to download enabling software in order to use it. IBM SaaS is an Eligible Product.

IBM SaaS User – one who accesses IBM SaaS using a user account identification and password associated with Customer's IBM SaaS account and provided by Customer.

IBM Software Subscription and Support – software subscription and support provided for IBM Programs licensed under the IPLA. See **3.5.1 IBM Software Subscription and Support** for further description.

IPLA – IBM's International Program License Agreement. The IPLA is included with each IBM Program in the Program's directory, in a library identified as "License," a booklet, or on a CD. It is also available on the Internet at <http://www.ibm.com/software/sla> and from IBM and its resellers.

License Information ("LI") – a document that provides information and any additional terms specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI can also be found in the Program's directory, by the use of a system command, or as a booklet included with the Program.

Machine Code Component – microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, diagnostics, and any other code (all subject to any exclusions in the license provided with it) delivered with an IBM Machine Component for the purpose of enabling the Machine Component's function, as stated in its Specifications.

Machine Component – a hardware device, features, conversions, Upgrades, elements, or accessories, or any combination of them. The term "Machine Component" includes an IBM Machine Component and any non-IBM Machine Component (including other equipment) that IBM may provide to Customer.

Non-IBM Program – a Program that is governed by the terms of the third party end user license agreement that accompanies it. IBM is not a party to the third party end user license agreement and assumes no obligations under it.

Originating Company – the legal entity that is authorized to execute and administer this Agreement on behalf of an Enterprise. The Originating Company need not be a "company" and may be the entire Enterprise.

Originating Site – Originating Company Site.

Personal Data – any information that can be used to identify a specific individual, such as name, email address, home address, or phone number that is provided to IBM to store, process, or transfer on Customer's behalf.

Processor Chip – Electronic circuitry containing one or more Processor Cores that plugs into a Processor Socket.

Processor Core – A physical functional unit within a computing device that interprets and executes program instructions and consists of at least one instruction control unit and one or more arithmetic and logic units. A multi-core technology allows two or more Processor Cores to be active on a single Processor Chip. A System z Integrated Facility for Linux (IFL) engine is considered a single Processor Core.

Processor Socket – Electronic circuitry that accepts a Processor Chip.

Processor Value Unit ("PVU") – A metric used by IBM to assign a value to a Processor Core. The Processor Value Unit licensing model is described at http://www.ibm.com/software/lotus/passportadvantage/pvu_licensing_for_customers.html.

Program – the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

Program Component – an IBM Program or Non-IBM Program that is preinstalled on a Machine Component.

Proof of Entitlement ("PoE") – the document in which IBM specifies an Eligible Product's level of authorized use. This PoE, supported by Customer's matching paid invoice or receipt, is evidence of Customer's level of authorized use.

RSVP – Relationship Suggested Volume Price.

Selected Program – a Non-IBM Program or an IBM Program licensed under the terms of the IBM License Agreement for Non-Warranted Programs.

Selected Support – Support for specified Selected Programs.

Service Provider – an entity that provides information technology services for end user customers, either directly or through a reseller.

Site – any defined entity, such as a physical location or organizational unit, e.g., a department, division, subsidiary or cost center, of Customer's Enterprise and for which IBM assigns a Passport Advantage Site Number.

Specifications – information specific to a Machine Component. IBM Machine Component Specifications are in a document entitled "Official Published Specifications."

Sub-Capacity Licensing – Licensing of Eligible Sub-Capacity Products based on Virtualization Capacity.

Subscription Period – the time during which IBM SaaS is made available to Customer as specified in the applicable Transaction Document.

SVP – Suggested Volume Price.

Term – the period that begins either on the date IBM accepts Customer's initial order (in the case of the initial Term) or on the Anniversary (in the case of subsequent Terms), and ends on the day immediately prior to the next Anniversary.

Terms of Use ("ToU") – additional terms under which IBM makes IBM SaaS offerings available to Customer and viewed at <http://www.ibm.com/software/sla/sladb.nsf/sla/tou/>.

Third Party Software Subscription and Support – software subscription and support provided under the third party's terms for Non-IBM Programs. See **3.5.1 Software Subscription and Support** for further description.

Upgrade – a change to a Machine Component to modify, add, remove, enable, or disable a certain Machine Component resource or function. Each such change can be accomplished through a Machine Component conversion, or through the conversion, addition, removal, or exchange of a Machine Component's feature(s), but only to the extent announced and supported by IBM for the Machine Component.

Virtualization Capacity – the highest peak processor capacity available to an Eligible Sub-Capacity Product when deployed on an Eligible Virtualization Environment in accordance with the rules specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>.

1.4 Acceptance of Terms

The Customer Originating Company and thereafter each of its participating Enterprise companies accepts this Agreement without modification by submitting an IBM International Passport Advantage Enrollment Form to IBM or the reseller(s) from whom they have chosen to acquire Eligible Products, as applicable. This Agreement is effective on the Effective Date and remains in effect until the Customer Originating Company or the IBM Originating Company terminates it in accordance with **Section 1.15 Agreement Termination**.

An Eligible Product becomes subject to this Agreement when IBM accepts Customer's order by i) sending Customer a Transaction Document, ii) making the Program or IBM SaaS available to Customer or, when applicable, shipping the Appliance, or iii) providing the support, service, or solution.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

1.5 Delivery

Transportation charges, if applicable, will be specified in a Transaction Document. For Programs IBM provides to Customer in tangible form, IBM fulfills its shipping and delivery obligations upon delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Customer and IBM.

1.6 Payment

- a. When Customer acquires Eligible Products from a reseller, Customer pays reseller directly.
- b. When Customer acquires Eligible Products from IBM, Customer agrees to pay as IBM specifies in its invoice or equivalent document, including any late payment fee; and
- c. The amount payable for a Program license may either be a one-time charge or a charge for a Fixed Term, depending on the type of license.

1.7 Taxes

If, as a result of Customer moving, accessing, or using an Eligible Product across a border, any authority imposes a customs duty, tax, levy or fee (including withholding taxes for the import or export of any such Eligible Product), then Customer agrees that it is responsible for, and will pay, any such customs duty, tax, levy or fee. This excludes those taxes based on IBM's net income.

1.8 RSVP Level

The initial "RSVP Level" is established by the point value of the initial order. If Customer acquires additional Eligible Products during a Term, Customer may attain higher RSVP Levels. The higher RSVP Level applies only when Customer acquires additional Eligible Products after the higher level is attained, except where the point value of an individual order by itself exceeds the point requirement for a higher "SVP Level." In such case, the higher SVP Level applies to the order.

At the first and each subsequent Anniversary, the RSVP Level is set, based on the Eligible Products Customer has acquired during the previous Term. If, in a subsequent Term, the point value of the Eligible Products Customer acquires during that Term is less than the point value necessary to maintain the current RSVP Level, then at the next Anniversary the RSVP Level will be reduced to reflect the level at which Customer is currently acquiring Eligible Products but not by more than one RSVP Level.

SVP/RSVP Level Table:

SVP/RSVP Level	BL	D	E	F	G	H
Points	<500	500	1,000	2,500	5,000	10,000

1.9 Changes to Agreement Terms

IBM may change the terms of this Agreement by giving the Customer Originating Company three months' written notice by letter or e-mail. Such change applies as of the date IBM specifies in the notice. Customer agrees that Customer has consented to any such change if Customer does not notify IBM in writing prior to the effective date specified in IBM's written notice that Customer disagrees with the change.

Otherwise, for a change to be valid, both the Customer Originating Company and the IBM Originating Company must sign it. Additional or different terms in any order or written communication from Customer are void.

1.10 Eligible Products

Each orderable part number for an Eligible Product is assigned a point value, which may be zero. This point value is used to determine Customer's RSVP or a transaction's SVP, as applicable. See Section 1.8 RSVP Level above.

IBM may add or withdraw Eligible Products or change an Eligible Product's SVP or point value at any time. If IBM withdraws an Eligible Product from marketing, Customer will no longer be able to acquire it under this Agreement.

If IBM withdraws a Program or a version of a Program from marketing, Customer may not increase its level of use, beyond the authorizations already acquired, on or after the effective date of withdrawal without IBM's prior written consent, which IBM will not unreasonably withhold.

1.11 IBM Business Partners and Resellers

In addition to acquiring Eligible Products from IBM, the Originating Site and the Additional Sites may acquire them from IBM Business Partners and resellers. Not all resellers, however, are authorized to resell all Eligible Products.

When Customer orders Eligible Products from Customer's IBM Business Partner(s) or reseller(s), IBM is not responsible for 1) their actions, 2) any additional obligations they have to Customer, or 3) any products or services that they supply to Customer under their agreements. When Customer acquires Eligible Products from an IBM Business Partner or reseller, the IBM Business Partner or reseller sets the charges and payment terms.

1.12 Intellectual Property Protection

For purposes of this Section 1.12, the term "Product" means an IBM Program, Machine Code Component, or IBM Machine Component.

1.12.1 Third Party Claims

If a third party asserts a claim against Customer that a Product infringes that party's patent or copyright, IBM will defend Customer against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved in advance by IBM, provided that Customer:

- a. promptly notifies IBM in writing of the claim;
- b. allows IBM to control, and cooperate with IBM in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with the Product's license and other terms and Customer's obligations under Remedies below.

1.12.2 Remedies

If such a claim is made or appears likely to be made, Customer agrees to permit IBM, in IBM's discretion, to: i) enable Customer to continue to use the Product; ii) modify it; or iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, Customer agrees to immediately discontinue use of the Product and return it and all copies to IBM on IBM's written request. IBM will then give Customer a credit equal to the amount Customer paid for the returned Product (if the Product is subject to Fixed Term charges, up to twelve months' charges).

1.12.3 Claims for Which IBM is Not Responsible

IBM has no obligation regarding any claim arising from or related to any of the following:

- a. anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. modification of a Product by Customer or a third party on Customer's behalf;
- c. a Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, when a claim could have been avoided or the risk of a claim reduced by using the current version or release;
- d. the combination, operation, or use of the Product with any program, hardware device, data, apparatus, method, or process;
- e. the distribution, operation, or use of the Product outside Customer's Enterprise or for the benefit of any third party; or
- f. Separately Licensed Code, if any, as identified in the LI for the Product.

The LI for the Product or other documents may permit Customer to copy, modify, or redistribute all or portions of the Product without paying additional licensing fees to IBM. The indemnification obligation under this Agreement only applies to copies of the Product provided to Customer by IBM and additional copies expressly authorized in a PoE. IBM has no obligation for claims relating to copies of the Product

neither provided by IBM nor specifically authorized by a POE, even if permitted by the LI for the Product or other documents.

This Intellectual Property Protection section states IBM's entire obligation and Customer's exclusive remedy regarding any third party intellectual property claims. This Intellectual Property section does not obligate in any manner any third-party supplier of code (including Separately Licensed Code) included with or part of the Product.

1.13 Limitation of Liability

The limitations and exclusions in this **Section 1.13 (Limitation of Liability)** apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

1.13.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Eligible Product or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of U.S. \$100,000 (or equivalent in local currency) or the charges (if the Eligible Product is IBM SaaS or is subject to Fixed Term charges, up to 12 months' charges) Customer paid for the Eligible Product that is the subject of the claim.

This limit also applies to any of IBM's Eligible Product developers and suppliers. It is the maximum for which IBM and its Eligible Product developers and suppliers are collectively responsible. Damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable are not subject to a cap on the amount of damages.

1.13.2 Items for Which IBM Is Not Liable

UNDER NO CIRCUMSTANCES IS IBM, ITS ELIGIBLE PRODUCT DEVELOPERS, OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

- a. **LOSS OF, OR DAMAGE TO, DATA;**
- b. **SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**
- c. **LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

1.14 General Principles of Our Relationship

1.14.1 Notices and Communications

To the extent permissible under applicable law, the parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

1.14.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments without obtaining Customer's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

Customer agrees that Eligible Products are for use within Customer's Enterprise only and may not be resold, rented, leased, or transferred to third parties. Any attempt to do so in violation of these provisions is void.

1.14.3 Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology products and services. IBM is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Eligible Products that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular Eligible Products under this Agreement meets

the requirements of such laws. Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate law applicable to that party.

Each party agrees to comply with all applicable export and import laws and regulations including without limitation United States embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

1.14.4 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any such claim and all respective rights related to the claim lapse.

1.14.5 Other Principles of Our Relationship

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Eligible Product under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Customer authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors, IBM Business Partners, and resellers) to store and use Customer's business contact information wherever they do business, in connection with IBM Eligible Products or in furtherance of IBM's business relationship with Customer.
- e. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except as described in section 1.12 (Intellectual Property Protection) above or permitted in Section 1.13 (Limitation of Liability) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- f. Customer is responsible for selecting the Eligible Products that meet its needs and for the results obtained from the use of the Eligible Products, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- g. Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties.
- h. Where approval, acceptance, consent, or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. Customer agrees that their use of IBM SaaS will comply with the IBM acceptable use policy at <http://www.ibm.com/services/us/imc/html/aup.html> and applicable data protection laws.
- k. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.
- l. In entering into this Agreement, including each Attachment, ToU, and Transaction Document, neither party is relying on any representation that is not specified in this Agreement, including without limitation any representations concerning: i) performance or function of any Eligible Product, other than as expressly warranted in this Agreement; ii) the experiences or recommendations of other parties; or iii) any results or savings that Customer may achieve.

1.15 Agreement Termination

The Customer Originating Company may terminate this Agreement without cause on one month's written notice.

The IBM Originating Company may terminate this Agreement on three months' written notice. If Customer acquired or renewed either IBM Software Subscription and Support for any IBM Programs or IBM SaaS prior to the notice of termination, IBM may either continue to provide IBM Software Subscription and Support to Customer for those Programs or those IBM SaaS offerings for the remainder of the current term or give Customer a prorated refund. If Customer acquired or renewed Third Party Software Subscription and Support for any Non-IBM Programs prior to the notice of termination, the third party may continue to provide Third Party Software Subscription and Support to Customer for that Non-IBM Program license for the remainder of the current term. If the third party does not do so, Customer may obtain a prorated refund.

The Customer Originating Company will be considered to have terminated this Agreement if neither it nor any of its participating Enterprise companies have placed orders for Eligible Products for 24 consecutive months nor have software subscription and support in effect.

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

Any terms of this Agreement that by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

1.16 Compliance Verification

For purposes of this **Section 1.16 (Compliance Verification)**, "Passport Advantage Terms" means 1) this Agreement and applicable Attachments, Transaction Documents, and Terms of Use provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (<http://www.ibm.com/softwarepolicies/>), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this **Section 1.16** remain in effect during the period the Eligible Product is in the possession or control of Customer, and for two years thereafter.

1.16.1 Verification Process

Customer agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Customer's use of all Eligible Products is in compliance with the Passport Advantage Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Customer is responsible for 1) ensuring that it does not exceed its authorized use, and 2) remaining in compliance with Passport Advantage Terms.

Upon reasonable notice, IBM may verify Customer's compliance with Passport Advantage Terms at all Sites and for all environments in which Customer uses (for any purpose) Eligible Products subject to Passport Advantage Terms. Such verification will be conducted in a manner that minimizes disruption to Customer's business, and may be conducted on Customer's premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

1.16.2 Resolution

IBM will notify Customer in writing if any such verification indicates that Customer has used any Eligible Product in excess of its authorized use or is otherwise not in compliance with the Passport Advantage Terms. Customer agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) software subscription and support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

1.17 Geographic Scope and Governing Law

1.17.1 Geographic Scope

The terms of this Agreement apply in countries in which 1) IBM markets its Eligible Products directly or 2) its Eligible Products have been announced as otherwise available.

1.17.2 Governing Law

The rights, duties, and obligations of each party are valid only in the country in which the transaction is performed or, if IBM agrees, the country where the Eligible Product is placed in productive use, except that all licenses are valid as specifically granted.

Both parties agree to the application of the laws of the country in which the transaction is performed to govern, interpret, and enforce all of Customer's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

2. Warranties

Unless IBM specifies otherwise, the following warranties apply only in the country of acquisition.

2.1 Warranty for IBM Programs

The warranty for an IBM Program is stated in its license agreement.

2.2 Warranty for IBM Software Subscription and Support and Selected Support

IBM warrants that it provides IBM Software Subscription and Support and Selected Support using reasonable care and skill.

2.3 Warranty for IBM Machine Components of IBM Appliances

IBM warrants that each IBM Machine Component is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine Component is a fixed period commencing on its Date of Installation (also called "Warranty Start Date") and specified in a Transaction Document. During the warranty period, IBM provides repair and exchange service for the IBM Machine Component, without charge, under the type of service IBM designates in a Transaction Document for the IBM Machine Component. If an IBM Machine Component does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to the party from whom Customer acquired it for a refund.

For an IBM Machine Component that IBM is responsible to install, if Customer elects to install the IBM Machine Component itself or have a third party install the IBM Machine Component, IBM may inspect the IBM Machine Component at Customer's expense before providing warranty service on the IBM Machine Component. If the IBM Machine Component is not in an acceptable condition for warranty service, as solely determined by IBM, Customer may request that IBM restore it to an acceptable condition for warranty service or Customer may withdraw its request for warranty service. IBM, at its sole discretion, will determine if restoration is possible. Restoration is provided as a billable service.

If the IBM Machine Component does not function as warranted during the warranty period, refer to the service documentation that shipped with the IBM Machine Component for support assistance and problem determination procedures.

If Customer is unable to resolve the problem with the service documentation, contact IBM or the reseller to obtain warranty service. Contact information for IBM is provided in the "Warranty Information" that ships with IBM Machine Component. If Customer does not register the IBM Machine Component with IBM, Customer may be required to present proof of purchase as evidence of Customer's entitlement to warranty service.

2.4 Warranty for IBM SaaS

The warranty for IBM SaaS is stated in the Terms of Use.

2.5 Extent of Warranty

THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, AND

FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

The warranties stated in Section 2.3 will not apply to the extent that there has been misuse (including, but not limited to, use of any Machine Component capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machine Components is voided by removal or alteration of Machine Components or parts identification labels.

Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of an Eligible Product or that IBM will correct all defects.

IBM will identify IBM Eligible Products that it does not warrant.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides non-IBM Eligible Products, **WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer.

3. Programs and Subscription and Support

To acquire additional authorizations to use Programs under this Agreement, Customer must have already acquired the Program code.

3.1 IBM Programs

IBM Programs acquired under this Agreement are governed by the terms of the IPLA.

3.1.1 Versions and Platforms:

Customer may use Programs and their associated user documentation in accordance with the terms of this Agreement in any commercially available national language version up to the level of use authorized in the PoE. Customer is authorized to use the Program(s) that Customer acquires under this Agreement on any platform or operating system for which IBM currently makes Program code available under this Agreement unless the Program is designated as platform or operating system specific at the time Customer acquired it.

3.1.2 IBM Trade-ups:

Licenses for certain Programs that replace qualifying IBM Programs may be acquired for a reduced charge. Customer agrees to terminate Customer's use of the replaced IBM Programs when Customer installs the replacement Programs.

3.1.3 Competitive Trade-ups:

Licenses for certain Programs that replace qualifying Non-IBM Programs may be acquired for a reduced charge. Customer agrees to terminate Customer's use of the replaced Non-IBM Programs when Customer installs the replacement Programs.

3.1.4 Money-back Guarantee

The IPLA's "money-back guarantee" only applies the first time Customer licenses the IBM Program. If an IBM Program license is for a Fixed Term that is subject to renewal, Customer may obtain a refund only if Customer returns the Program and its PoE within the first 30 days of its initial term. The IPLA's "money-back guarantee" does not apply to a Program Component of an Appliance.

3.1.5 Conflict between the Terms of this Agreement and those of the IPLA

If there is a conflict between the terms of this Agreement, including its Attachments and Transaction Documents and those of the IPLA, including its LI, the terms of this Agreement prevail. The IPLA and its LIs are available on the Internet at <http://www.ibm.com/software/sla>.

3.2 Programs in a Virtualization Environment

3.2.1 Authorizations

- a. A PoE must be acquired for the total number of PVUs associated with the Virtualization Capacity available to an Eligible Sub-Capacity Product.
- b. Prior to an increase in an Eligible Sub-Capacity Product's Virtualization Capacity, Customer must first acquire sufficient additional authorizations, including IBM Software Subscription and Support, if applicable, to cover that increase.

- c. IBM does not give credits or refunds for charges already due or paid if an Eligible Product's use falls below the authorized level of use.

3.2.2 IBM's Responsibilities

IBM will make available and authorize Customer to use:

- a. the ILMT at no charge, when ordered by Customer or Customer's IBM Reseller. IBM provides the ILMT to Customer for Customer's compliance with these Sub-Capacity Licensing terms; and
- b. the information center included with the ILMT to aid Customer's compliance with these Sub-Capacity Licensing terms.

Customer may make copies of the ILMT and information center for Customer's compliance with these Sub-Capacity Licensing terms.

3.2.3 Customer's Responsibilities under Sub-Capacity Licensing Terms

Customer agrees to:

- a. install and configure the most current version of ILMT in accordance with the ILMT information center, within 90 days of Customer's first Eligible Sub-Capacity Product deployment on an Eligible Virtualization Environment, to enable Customer to collect Virtualization Capacity data by Eligible Sub-Capacity Product and generate Audit Reports in accordance with these Sub-Capacity Licensing terms. Exceptions to this requirement are:

- (1) when ILMT does not yet provide support for the Eligible Virtualization Environment
- (2) if Customer's Enterprise has fewer than 1,000 employees and contractors, Customer is not a Service Provider, and Customer has not contracted with a Service Provider to manage Customer's Eligible Virtualization Environment
- (3) if the total physical capacity of Customer's Enterprise servers with an Eligible Virtualization Environment, measured on a Full Capacity basis, but licensed using sub-capacity terms is less than 1,000 PVUs.
- (4) when Customer's servers with Eligible Sub-Capacity Products are licensed to the Full Capacity of the servers

For these exceptions, use of ILMT, while recommended, is not required for Sub-Capacity Licensing. In lieu of ILMT, Customer is required to manually manage and track Customer's Eligible Virtualization Environment, and manually prepare Audit Reports documenting the Virtualization Capacity by Eligible Sub-Capacity Product for Customer's Eligible Virtualization Environment during each calendar or fiscal quarter. These Audit Reports must contain the information listed in the example Audit Report available at

<http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> . These Audit Reports must be prepared as frequently as is required to maintain a history of increases to Virtualization Capacity, but not less often than once per quarter, and must be maintained for at least two years to demonstrate ongoing compliance with these Sub-Capacity Licensing terms;

- b. promptly install new versions, releases, modifications, or code corrections ("fixes") of the ILMT that IBM makes available. Customer must subscribe to Tivoli Support notifications via <http://www.ibm.com/support/mynotifications> in order to be notified when these become available;
- c. not alter, modify, omit, delete, or otherwise misrepresent by any means, directly or indirectly, the:
 - (1) ILMT audit records;
 - (2) ILMT, except for changes provided by IBM; or
 - (3) Audit Reports that Customer submits to IBM.
- d. generate, using ILMT or manually, Audit Reports at least each calendar or fiscal quarter and retain for a period of not less than two years the Audit Reports and make these reports available to IBM upon notice as specified in Section 1.16. Failure to generate Audit Reports or make Audit Reports available to IBM will result in charging for Eligible Sub-Capacity Products under Full Capacity terms;
- e. assign a person in Customer's organization with authority to manage and promptly resolve any questions on Audit Reports or inconsistencies between Audit Report contents, license entitlement, or ILMT configuration;
- f. promptly place an order with IBM or Customer's IBM reseller if Audit Reports reflect Eligible Sub-Capacity Product use in excess of Customer's authorized level. IBM Software Subscription and

Support coverage will be determined to begin at the time Customer exceeded Customer's authorized level.

3.2.4 Additional Terms

Product deployments that are not able to meet these Sub-Capacity Licensing requirements must be licensed using Full Capacity terms.

3.3 Fixed Term Licensing

Fixed Term Licenses have a term that begins on the date that Customer's order is accepted by IBM; on the calendar day following the expiration of a prior Fixed Term; or on the calendar day following the Anniversary date, as applicable.

3.3.1 Automatic Renewal of Fixed Term Licenses

Customer may renew Customer's expiring Fixed Term License by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING FIXED TERM LICENSES ARE AUTOMATICALLY RENEWED FOR THE SAME DURATION AS THE EXPIRING TERM UNDER THE TERMS OF THIS AGREEMENT AND AT THE THEN CURRENT RENEWAL CHARGES FOR SUCH PROGRAM LICENSES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM CUSTOMER OR THROUGH CUSTOMER'S RESELLER, AS APPLICABLE, CUSTOMER'S WRITTEN NOTIFICATION THAT CUSTOMER DOES NOT WANT TO RENEW. CUSTOMER AGREES TO PAY SUCH RENEWAL CHARGES.

If Customer chooses not to renew the Fixed Term License, Customer agrees to discontinue use of the Program on the expiration date.

If, after the expiration date, Customer chooses to resume use of the Program, Customer must pay charges associated with an initial Fixed Term License rather than a Fixed Term License renewal.

3.3.2 Anniversary Coordination

For Fixed Terms of six months or more only, initial or subsequent Fixed Terms entered into on a date other than the Anniversary may be renewed at the next Anniversary for an additional period, at a prorated renewal charge, in order to extend the Fixed Term to the following Anniversary.

3.3.3 Withdrawal of Fixed Term License for a particular Program

If IBM withdraws Fixed Term licensing for a particular IBM Program, Customer understands that

- a. Customer may not renew the Fixed Term License for that IBM Program; and
- b. if Customer renewed the Fixed Term License for that IBM Program prior to the notice of withdrawal, Customer may either (a) continue to use the Program under the Fixed Term License terms until the end of the then current Fixed Term or (b) obtain a prorated refund.

3.4 CEO Product Categories

"CEO Product Categories" (groupings of Eligible Products) are acquired on a per-user basis. Customer must acquire Customer's first CEO Product Category ("Primary Product Category") for all CEO Users within Customer's Enterprise and for not less than the number of CEO Users specified in the CEO Product Categories Table at <http://www.ibm.com/software/passportadvantage>.

Customer may acquire additional CEO Product Categories if Customer meets the minimum number of CEO Users requirement specified in the CEO Product Category in the CEO Product Categories Table at <http://www.ibm.com/software/passportadvantage>. However, Customer need not acquire additional CEO Product Categories for all CEO Users within Customer's Enterprise.

A CEO User may use any or all of the Programs included in a chosen CEO Product Category. But all IBM Programs that are used for client access must be acquired from the same CEO Product Category as the server Program they access.

CEO Product Categories: Additions and Deletions

IBM may add Eligible Products to or delete Eligible Products from any CEO Product Category at any time. If IBM deletes an Eligible Product from a CEO Product Category, Customer may continue to use the deleted Eligible Product but Customer may not exceed the number of CEO Users enrolled prior to the deletion.

Increasing the number of CEO Users

In the event Customer increases the number of CEO Users, Customer must acquire an authorization to use the CEO Product Category for each new CEO User.

Decreasing the number of CEO Users

Customer will notify IBM in writing prior to Customer's next Anniversary in the event Customer's total number of CEO Users decreases. Decreases may result from a reorganization, restructuring, or sale of one or more of Customer's Sites. A reduction in the number of CEO Users of a temporary or seasonal nature does not qualify as a decrease. Following a decrease in the number of CEO Users, a lower SVP Level may result. If the level of authorized use of a CEO Product Category drops below the minimum number of CEO Users applicable to that CEO Category, Customer may not renew IBM Software Subscription and Support on a CEO Product Category basis.

3.5 Software Subscription and Support and Selected Support

3.5.1 Software Subscription and Support

- a. For purposes of this Agreement, "software subscription and support" means both IBM Software Subscription and Support and Third Party Software Subscription and Support. IBM provides IBM Software Subscription and Support with each IBM Program licensed under the IPLA. IBM Software Subscription and Support is a single offering not available as separate components. IBM does not provide IBM Software Subscription and Support for (i) Non-IBM Programs or for (ii) Programs that are licensed under the IBM License Agreement for Non-Warranted Programs (together "Selected Programs").
- b. IBM Software Subscription and Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.
- c. While IBM Software Subscription and Support is in effect for an IBM Program license:
 - (1) IBM will make available to Customer IBM Program defect corrections, restrictions, and bypasses, if any, that it develops.
 - (2) IBM will make available to Customer and authorize Customer to use the most current commercially available version, release, or update, should any be made available.
 - (3) IBM provides Customer assistance for Customer's i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions (together "Support"). Such Support for a particular version or release of an IBM Program is available only until IBM or the third party, as applicable, withdraws Support for that IBM Program's version or release. When Support is withdrawn, Customer must upgrade to a supported version or release of the IBM Program in order to continue to receive Support. The IBM "Software Support Lifecycle" policy is available at <http://www.ibm.com/software/info/supportlifecycle/>.
 - (4) IBM provides Support via electronic access and, if available, telephone, only to Customer's information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Customer's IBM support center. (This assistance is not available to Customer's end users.) IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Handbook for details at <http://www.ibm.com/software/support>.
 - (5) IBM may request that Customer allow it to remotely access Customer's system to assist Customer in isolating the software problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.
- d. IBM Software Subscription and Support does not include assistance for 1) the design and development of applications, 2) Customer's use of IBM Programs in other than their specified operating environment or 3) failures caused by products for which IBM is not responsible under this Agreement.

FOR THE AUTHORIZED USE OF EACH IBM PROGRAM INSTALLED AND IN SERVICE AT A CUSTOMER'S SITE, CUSTOMER HAS THE OPTION TO MAINTAIN IBM SOFTWARE SUBSCRIPTION AND SUPPORT FOR EITHER (a) ALL OF THE AUTHORIZED USE OR (b) NONE OF THE AUTHORIZED USE.

THERE IS NO OPTION FOR MAINTAINING IBM SOFTWARE SUBSCRIPTION AND SUPPORT COVERAGE FOR ONLY A PORTION OF AUTHORIZED USE INSTALLED AND IN SERVICE FOR AN IBM PROGRAM AT A CUSTOMER SITE.

CUSTOMER SHALL NOT USE ANY OF THE IBM SOFTWARE SUBSCRIPTION AND SUPPORT BENEFITS SPECIFIED IN SUBSECTION C OF THIS SECTION 3.5.1, INCLUDING THE APPLICATION OR USE OF ANY FIXES, UPDATES, OR UPGRADES, FOR IBM PROGRAMS FOR WHICH CUSTOMER HAS NOT FULLY PAID IBM SOFTWARE SUBSCRIPTION AND SUPPORT. IF CUSTOMER USES ANY OF THESE BENEFITS FOR WHICH IT HAS NOT FULLY PAID, THEN CUSTOMER AGREES TO ACQUIRE IBM SOFTWARE SUBSCRIPTION AND SUPPORT REINSTATEMENT SUFFICIENT TO COVER ALL SUCH UNAUTHORIZED USE OF SUCH BENEFITS AT THEN CURRENT APPLICABLE IBM PRICES.

3.5.2 Selected Support

Selected Programs eligible for Selected Support are listed at <http://www.ibm.com/lotus/PASupportedSupportPrograms>.

Selected Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.

While Selected Support is in effect for a Selected Program:

- a. IBM will make available to Customer Selected Program defect corrections, if any, that it develops.
- b. IBM provides Customer assistance for Customer's 1) routine, short duration installation and usage (how-to) questions; and 2) code related questions. Selected Support for a particular version or release of a Program is available only until IBM withdraws Selected Support for that Program's version, release, or modification. When such Selected Support is withdrawn, Customer must upgrade to a supported version or release of the Program in order to continue to receive such support. The IBM "Software Support Lifecycle" policy does not apply to Selected Support.
- c. IBM may provide Customer with assistance in designing and developing applications based on Customer's subscription level.
- d. IBM may provide assistance via electronic access and, if available, telephone, depending on Customer's location and the subscription level Customer acquires. Such assistance is provided only to Customer's information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Customer's IBM support center. Consult the IBM Software Support Handbook for details applicable to Selected Support at <http://www.ibm.com/software/support>.
- e. IBM may request that Customer allow it to remotely access Customer's system to assist Customer in isolating the software problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.

IBM does not provide licenses under this Agreement for Selected Programs.

3.5.3 Customer Data and Databases

To assist Customer in isolating the cause of a problem with a Program under either IBM Software Subscription and Support or Selected Support, IBM may request that Customer 1) allow IBM to remotely access Customer's system or 2) send Customer information or system data to IBM. IBM uses information about errors and problems to improve its products and services, and assist with its provision of related support offerings. For these purposes, IBM may use IBM entities and subcontractors (including in one or more countries other than the one in which Customer is located), and Customer authorizes IBM to do so.

Customer remains responsible for 1) any data and the content of any database Customer makes available to IBM, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Customer will not send or provide IBM access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that IBM may incur relating to any such information mistakenly provided to IBM or the loss or disclosure of such information by IBM, including those arising out of any third party claims.

3.5.4 Automatic Annual Renewal of Software Subscription and Support and Selected Support

Customer may renew Customer's expiring software subscription and support or Selected Support by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT AND SELECTED SUPPORT ARE AUTOMATICALLY RENEWED TO THE NEXT ANNIVERSARY UNDER THE TERMS OF THIS AGREEMENT AND AT THE THEN CURRENT RENEWAL CHARGES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM CUSTOMER OR THROUGH CUSTOMER'S RESELLER, AS APPLICABLE, CUSTOMER'S WRITTEN NOTIFICATION THAT CUSTOMER DOES NOT WANT TO RENEW. CUSTOMER AGREES TO PAY SUCH RENEWAL CHARGES.

Software subscription and support or Selected Support acquired or renewed on the Anniversary is renewable for an additional term of 12 full months.

Software subscription and support or Selected Support acquired on a date other than the Anniversary is renewable at the next Anniversary for an additional term of less than 12 full months for a pro-rated charge, thereby extending the coverage to the following Anniversary.

To reinstate any expired software subscription and support coverage, Customer must acquire IBM Software Subscription and Support Reinstatement or Third Party Software Subscription and Support Reinstatement, as applicable.

3.5.5 Withdrawal of Software Subscription and Support or Selected Support for a Particular Program

If IBM or the third party, as applicable, withdraws software subscription and support or Selected Support for a particular Program, Customer understands that

- a. IBM will not make software subscription and support renewal or Selected Support renewal available for that Program; and
- b. if Customer renewed IBM Software Subscription and Support for that IBM Program license or Selected Support for a Selected Program license prior to the notice of withdrawal, IBM may either continue to provide IBM Software Subscription and Support or Selected Support to Customer for that Program license until the end of the then current term or Customer may obtain a prorated refund. If Customer renewed Third Party Software Subscription and Support for that Non-IBM Program prior to the notice, the third party may continue to provide Third Party Software Subscription and Support to Customer for that Non-IBM Program license until the end of the then current term. If the third party does not do so, Customer may obtain a prorated refund.

4. Appliances

4.1 Virtual Appliance

Customer is licensed to use the Program(s) pursuant to the terms of this Agreement.

4.2 Appliances Comprising Both Program and Machine Components

IBM provides Appliances comprising both Program Components and Machine Components as a single product. Customer shall not use either such component independently of the Appliance of which it is a part for any purpose.

4.3 Program Components

Customer is licensed to use the Program Component(s) pursuant to the terms of this Agreement, but only on the Machine Component supplied by IBM or an authorized reseller or any replacement of a Machine Component provided to Customer by IBM or an authorized reseller. Customer may not transfer its license to use the Program Component(s) to another Enterprise.

4.4 Machine Components

4.4.1 Production Status

Each IBM Machine Component is manufactured from parts that may be new or used. In some cases, an IBM Machine Component may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms described in Part 2.3 apply.

4.4.2 Title and Risk of Loss

When Customer acquires a Machine Component directly from IBM, IBM transfers title to a Machine Component to Customer or, if applicable, Customer's lessor, upon payment of all the amounts due. For a feature, conversion, or another type of upgrade acquired for a Machine Component, IBM reserves transfer of title until IBM receives payment of all the amounts due and, as applicable, all removed parts, which become IBM's property.

For each Machine Component, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine Component will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, Customer must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

4.4.3 Installation

a. Machine Component Installation

- (1) Customer agrees to provide an environment meeting the requirements for the Machine Component as specified in its published documentation.
- (2) Customer is responsible for installing a Customer-set-up Machine Component and a non-IBM Machine Component according to instructions provided by IBM or the Machine Component's manufacturer.
- (3) For a Machine Component that IBM is responsible for installing, IBM has standard installation procedures. IBM will successfully complete these procedures before it considers a Machine Component (other than a Machine Component for which Customer defers installation or a Customer-set-up Machine Component) installed. For an IBM Machine Component that IBM is responsible to install, if the IBM Machine Component is not made available for IBM to install within six months from shipment, installation will be subject to an installation charge.

b. Upgrades and Engineering Changes

- (1) IBM sells Upgrades for installation on Machine Components, and, in certain instances, only for installation on a designated, serial-numbered Machine Component. Within 30 days of the shipment of an Upgrade, Customer agrees to install the Upgrade or, if IBM is responsible for the installation, to allow IBM to install the Upgrade. Certain Upgrade orders may be terminated at IBM's discretion if not made available for IBM to install within 30 days of shipment, in which case Customer must return the Upgrade at Customer's expense. In all cases, if the Upgrade is not made available for IBM to install within six months from the date IBM ships the Upgrade, installation will be subject to an installation charge.
- (2) Customer agrees to allow IBM to install mandatory Engineering Changes (such as those required for safety) on a Machine Component within 30 days of IBM's notice to Customer unless otherwise agreed to by the parties.

Many Upgrades and Engineering Changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the Upgrade or Engineering Change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install Upgrades and Engineering Changes and ii) transfer ownership and possession of removed parts to IBM. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance service status of the replaced part.

4.4.4 Machine Code Component

A Machine Code Component is licensed under the terms and restrictions of the Machine Code license agreement (e.g., IBM License Agreement for Machine Code, IBM Agreement for Licensed Internal Code, or an equivalent) provided with the Machine Code Component. Customer acceptance of the terms of this Agreement includes acceptance of IBM's Machine Code license agreements, current versions of which are available at the following URL:

http://www.ibm.com/servers/support/machine_warranties/support_by_product.html or by contacting an IBM representative. Machine Code license agreements may be amended by IBM from time to time. Such amended license terms will apply only to Machine Code Component that is supplied after such amended terms become effective.

A Machine Code Component is licensed only for use to enable a Machine Component to function in accordance with its Specifications and only for the capacity and capability for which Customer has acquired IBM's written authorization. Customer agrees to use the Machine Code Component only as specified in this Agreement and as may be further authorized or restricted in its applicable license agreement. Without limiting additional restrictions in the applicable license, Customer may not

- a. otherwise copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) the Machine Code Component, except as IBM may authorize in the Machine Component's user documentation or in writing to Customer;
- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the Machine Code Component unless expressly permitted by applicable law without the possibility of contractual waiver;
- c. sublicense or assign the license for the Machine Code Component; or
- d. lease the Machine Code Component or any copy of it.

International Business Machines Corporation, one of its subsidiaries, or a third party owns the Machine Code Component including all copyrights in the Machine Code Component and all copies of the Machine Code Component (this includes the original Machine Code Component, copies of the original Machine Code Component, and copies made from copies). The Machine Code Component is copyrighted and licensed (not sold).

Title will not be transferred when IBM supplies features, conversions, or upgrades that consist solely of Machine Code Component.

The capacity of certain Machine Components may be limited by technological measures in the Machine Code Component. Customer agrees to IBM's implementation of such technological measures to limit Machine Component capacity.

4.4.5 Delivery

Delivery dates for Appliances with Machine Components are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document.

5. IBM SaaS

Customer agrees that IBM is not providing it with access to the Internet in order to use IBM SaaS and that Customer remains responsible for Internet access.

Customer acknowledges that International Business Machines Corporation and its subsidiaries (1) do not control the transfer of data over telecommunications facilities, including the Internet, and (2) in a public Internet environment cannot commit to particular confidentiality obligations.

The exchange of any confidential information made under a separate, signed confidentiality agreement, pursuant to 1.14.5b of this Agreement, does not apply to Content. IBM assumes no confidentiality obligations regarding Content, notwithstanding the terms of any separate confidentiality agreement between Customer and IBM.

5.1 Ownership

IBM and its suppliers own IBM SaaS. Customer agrees that title to, ownership of and all rights in and to patents, copyrights, trademarks, and all other intellectual property rights in IBM SaaS, and any copy or part of IBM SaaS will remain with IBM and its suppliers. IBM may subcontract IBM SaaS, or any part of it, including technical support, to subcontractors selected by IBM.

5.2 Customer's Right to Use

Customer may use an IBM SaaS offering in accordance with its Terms of Use, up to the specified level of use authorized in the Proof of Entitlement, on condition that:

- a. Customer accepts the Terms of Use of the IBM SaaS offering;
- b. Customer ensures that anyone who uses the IBM SaaS offering does so only on Customer's behalf and complies with the terms of this Agreement and the applicable Terms of Use; and
- c. Customer does not
 - (1) use, copy, modify, or make the IBM SaaS offering available, in whole or on part, to third parties except as expressly permitted in this Agreement and the applicable Terms of Use;

- (2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the IBM SaaS offering, unless expressly permitted by applicable law without the possibility of contractual waiver;
- (3) use any of the IBM SaaS offering's components, files, modules, audio-visual content, or related licensed materials separately from that of the IBM SaaS offering;
- (4) rent, sublicense, or lease the IBM SaaS offering;
- (5) create Internet "links" to or from the IBM SaaS offering; or
- (6) "frame" or "mirror" any content forming part of an IBM SaaS offering, other than on Customer's own intranets in connection with Customer's authorized use of the IBM SaaS offering.

5.3 Subscription to IBM SaaS

5.3.1 Terms for a Specific IBM SaaS Offering

The terms of a specific IBM SaaS offering are provided in its Terms of Use and may include without limitation definitions, description of subscription and services, charge metrics, and restrictions.

5.3.2 IBM SaaS Subscription Period

An IBM SaaS Subscription Period begins on the date that IBM notifies Customer that Customer has access to the subscribed offering. The end date of a Subscription Period as specified in a Transaction Document is the last day of a month.

During an IBM SaaS Subscription Period, Customer may increase Customer's subscribed level of an IBM SaaS offering.

Customer may not decrease Customer's subscribed level of an IBM SaaS offering during a Subscription Period but may decrease in a subsequent Subscription Period.

5.3.3 IBM SaaS Subscription Period Renewal

Customer may renew an IBM SaaS offering at the end of a Subscription Period, unless otherwise specified in the offering's Terms of Use. Some IBM SaaS offerings, as specified in the IBM SaaS offering's Terms of Use or Transaction Document, automatically renew at the end of the Subscription Period unless, prior to the end of the Subscription Period, IBM receives, either directly or through Customer's reseller, as applicable, Customer's written notification not to renew.

5.4 IBM SaaS Technical Support

During an IBM SaaS Subscription Period:

- a. IBM provides assistance, as specified in the ToU, for Customer's offering-specific, task-oriented questions regarding the use of IBM SaaS; and
- b. IBM SaaS technical support is available only for the currently supported versions of IBM SaaS, client operating systems, Internet browsers, and software. IBM technical support is available during the normal business hours (published prime shift hours) of the IBM SaaS support center. Consult the Terms of Use for details applicable to a specific IBM SaaS offering.

5.5 Content

IBM provides only services for Content. IBM is not the publisher of Content transmitted within IBM SaaS.

Customer has sole responsibility for the following:

- a. ensuring the adequacy of any IBM SaaS elements to satisfy any Customer requirements;
- b. all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support;
- c. having all necessary authorizations to allow IBM and its subcontractors to host, cache, record, copy, and display Content, and Customer represents that it has and will keep in effect during its use of IBM SaaS all such authorizations and approvals necessary to grant IBM and its subcontractors these rights, and that such rights are provided at no charge to IBM. Customer retains all right, title, and interest in and to its Content; and
- d. the selection and implementation of procedures and controls regarding access, security, encryption, use, transmission, and backup and recovery of Content.

Customer grants to IBM and its subcontractors a nonexclusive, irrevocable, worldwide, royalty-free, fully-paid, transferable license to host, cache, record, copy, and display Content, solely for the purpose of making IBM SaaS available.

5.6 Termination of IBM SaaS

IBM may withdraw the IBM SaaS in its entirety on 12 months' written notice to all then current Customers by letter or e-mail.

Notwithstanding anything to the contrary in this Agreement, if IBM terminates Customer's access to the IBM SaaS due to Customer's breach of any of the applicable terms of this Agreement, IBM is not obligated to issue a refund or credit for any unused portion of IBM SaaS.

6. Reserved

The balance of the page is left intentionally blank.

International Program License Agreement

Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, CLICKING ON AN "ACCEPT" BUTTON, OR OTHERWISE USING THE PROGRAM, LICENSEE AGREES TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF LICENSEE, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND LICENSEE TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, CLICK ON AN "ACCEPT" BUTTON, OR USE THE PROGRAM; AND
- PROMPTLY RETURN THE UNUSED MEDIA, DOCUMENTATION, AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM IT WAS OBTAINED FOR A REFUND OF THE AMOUNT PAID. IF THE PROGRAM WAS DOWNLOADED, DESTROY ALL COPIES OF THE PROGRAM.

1. Definitions

"Authorized Use" – the specified level at which Licensee is authorized to execute or run the Program. That level may be measured by number of users, millions of service units ("MSUs"), Processor Value Units ("PVUs"), or other level of use specified by IBM.

"IBM" – International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") – a document that provides information and any additional terms specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI can also be found in the Program's directory, by the use of a system command, or as a booklet included with the Program.

"Program" – the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, files, and modules, 3) audio-visual content (such as images, text, recordings, or pictures), and 4) related licensed materials (such as keys and documentation).

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The rights and obligations set forth in this Section 11 remain in effect during the period the Program is licensed to Licensee, and for two years thereafter.

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11.2 Resolution

IBM will notify Licensee in writing if any such verification indicates that Licensee has used any Program in excess of its Authorized Use or is otherwise not in compliance with the IPLA Program Terms. Licensee agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

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13. General

- a. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- b. For Programs IBM provides to Licensee in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Licensee and IBM.
- c. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
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- e. Licensee authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Licensee's business contact information wherever they do business, in connection with IBM products and services, or in furtherance of IBM's business relationship with Licensee.
- f. Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement.
- g. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: 1) neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and 2) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.
- h. Neither Licensee nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
- i. No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for any third party claims against Licensee, except as permitted in Subsection 10.1 (Items for Which IBM May Be Liable) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- j. In entering into this Agreement, neither party is relying on any representation not specified in this Agreement, including but not limited to any representation concerning: 1) the performance or function of the Program, other than as expressly warranted in Section 8 (Warranty and Exclusions) above; 2) the experiences or recommendations of other parties; or 3) any results or savings that Licensee may achieve.
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- I. The license and intellectual property indemnification terms of Licensee's other agreements with IBM (such as the IBM Customer Agreement) do not apply to Program licenses granted under this Agreement.

14. Geographic Scope and Governing Law

14.1 Governing Law

Both parties agree to the application of the laws of the country in which Licensee obtained the Program license to govern, interpret, and enforce all of Licensee's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

14.2 Jurisdiction

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license.

Exhibit K

IBM International Passport Advantage Agreement Attachment for Government Option

These terms modify or are in addition to those of the IBM International Passport Advantage Agreement ("the Agreement").

You accept the terms of this Attachment without modification by indicating you are enrolling under the Government Option when you submit an IBM International Passport Advantage Enrollment Form to IBM or your reseller, as applicable.

To participate in the Government Option under the Agreement, you must be an agency or affiliated entity

of either the U.S. Federal government or a state or local government. Under this Government Option Attachment to the Agreement, you receive special pricing due to your status as government and therefore other pricing and discounting mechanisms and procedures do not apply.

Section 5 - Relationship SVP Level of the Agreement does not apply under this Attachment.

Auditor GPC
WB

REQUEST TO ENCUMBER, ADD, LIQUIDATE FUNDS OR PAY CONTRACTOR

PART I: REQUEST FROM CONTRACTING DEPARTMENT

Contractor's Name: International Business Machines (IBM) Corp.

If Pay Contract-Remittance Address:

Contractor's Vendor ID: 13283 Master Contract #: n/a Procurement Contract #: 10790

Description of Contract: Electronic Forms Solutions software

Procurement Contract Begin Date: 9/23/2014 Expire Date: 9/22/2015

Elation Project Info: ☐ Sub-Contractor Compliance ☐ Labor Compliance

Board Waiver #: GSA Waiver #: 3185

Federal Fund Waiver #:

A. ENCUMBER FUNDS IN A NEW PURCHASE ORDER

Date of Board Minute Order: 9/23/2014

File/Item/Contract Number:

Total Amount Authorized By Board: \$125,935.88

Amount to be Encumbered: \$125,935.88

Justification if partial encumbrance requested:

B. ADD FUNDS TO AN EXISTING PURCHASE ORDER

PO Number:

Date of Board Minute Order:

File/Item/Contract Number:

Total Amount Authorized By Board:

Amount to be Encumbered:

Justification if partial encumbrance requested:

C. LIQUIDATE FUNDS FROM A PURCHASE ORDER

Purchase Order Number:

Amount to be Liquidated:

Liquidation Justification:

D. PAY CONTRACTOR - ATTACH INVOICE

PO#:

PO Type:

Business Unit:

Voucher #:

Invoice #:

Amount Due \$:

Service Period:

Payment Handling: ☐ US Mail☐ Return to Department☐ CBAP Payment

Pay Comments:

Dept Claims Processor:

Dept. Claims Approver:

Authorized signatory below certifies that contractor has provided goods/services as invoiced and verifies the mathematical accuracy of the invoice; that all financial provisions of the contract have been met (including the rates charged); that all invoiced items are specifically authorized by the contract and no contract limits have been exceeded (in total, by month or by expense category).

ACCOUNTING INFORMATION

Business Unit	Account	Fund	Dept	Program	BY	Subclass	Proj/Grant	Amount
SOCSA	610292	10000	320100	30400	2015			\$125,935.88
Total								\$125,935.88

Send Response to: Muang Saechao QIC: 20203 Phone: 267-9447

Authorized Signature: Department: SSA Contracts

Date: 9-9-14

Print Name of Authorized Signatory: Kathy Chen

PART II: RESPONSE FROM AUDITOR-CONTROLLER

☐ The Auditor-Controller encumbered in a new PO. The PO Number is☐ The Auditor-Controller added to PO Number☐ The Auditor-Controller liquidated from PO Number☐ Contractor payment Approved ☐ Contractor payment Denied-Reason:☐ This form is being returned to you due to insufficient funds in the appropriation account.☐ The following information is needed before this request can be processed.

Signature of Contract Processor/Claims Approver

Date:

QUESTIONNAIRE FOR DETERMINING THE WITHHOLDING STATUS

INSTRUCTIONS: This questionnaire is to be completed by the County department for services contracts and must be included as part of the contract package. Be sure to answer all of the questions in Sections I and II and to complete the certifications on page 2. Sections III and IV contain supplemental questions to be answered for contractors in certain service categories.

CONTRACTOR NAME: International Business Machines (IBM) Corp DEPT #: SOCSA

TITLE/SERVICE: Electronic Forms Solutions

DEPT. CONTACT: Muang Saechao PHONE: 510-267-9447

I. INFORMATION ABOUT THE CONTRACTOR YES NO

1. Is the contractor a corporation or partnership? (X) ()
2. Does the contractor have the right per the contract to hire others to do the work agreed to in the contract? (X) ()
3. If the answer to BOTH questions is YES, provide the employer ID number here: 13-0871985
No other questions need to be answered. Withholding is not required.
4. If the answer to question 1 is NO and 2 is YES, provide the individual social security number here: _____
No other questions need to be answered. Withholding is not required.
5. If the answer to question 2 is NO, continue to Section II.

II. RELATIONSHIP OF THE PARTIES YES NO

1. Does the County have the right to control the way in which the work will be done, i.e., will the County be able to specify the sequence of steps or the processes to be followed if it chooses to do so? () ()
2. Is the contractor restricted from performing similar services for other businesses while he is working for the County? () ()
3. Will the contractor be working for more than 50% of the time for the County (50% = 20 hrs/wk; 80 hrs/mo)? () ()
4. Is the relationship between the County and the contractor intended to be ongoing? () ()

III. FOR CONSULTANTS, PROJECT MANAGERS, PROJECT COORDINATORS **YES NO**

1. Is the contractor being hired for a period of time rather than for a specific project? () ()
2. Will payment be based on a wage or salary (as opposed to a commission or lump sum)? () ()

IV. FOR PHYSICIANS, PSYCHIATRISTS, DENTISTS, PSYCHOLOGISTS **YES NO**

1. Will the agreement be with an individual who does not have an outside practice? () ()
2. Will the contractor work more than an average of ten hours per week?
IF THE ANSWER TO QUESTION 2 IS YES, ANSWER QUESTION 3. () ()
3. Will the County provide more than 20% of the contractor's income? () ()
4. If the answer to either question 2, or if required, question 3 is NO, the entire answer is NO.

A "YES" answer to any of the questions in Section II, or, if applicable, Sections III or IV constitutes justification for paying the contractor through the payroll system as an "employee for withholding purposes."

CERTIFICATIONS:

I hereby certify that the answers to the above questions accurately reflect the anticipated working relationship for this contract.

Devin F. Brown
Contractor Signature

Devin F. Brown
Printed Name

9/5/14
Date

Don R Edwards
Agency/Department Head/Designee
Signature

DON R EDWARDS
Printed Name

9-5-14
Date

Subject of Board Letter:

Approval of FY 2014-2015 Service agreements with International Business Machines (IBM)

BY: 2015**FUND:** 10000

The use of Designations, as follows:

NAME OF DESIGNATION	ORG	AMOUNT

The increase (decrease) in anticipated revenue, as follows:

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
320100	450000	00000		\$960,903
	455000	00000		\$411,816
ORG TOTAL				\$1,372,719

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
ORG TOTAL				\$0

GRAND TOTAL ANTICIPATED REVENUE \$1,372,719

The increase (decrease) in appropriations, as follows:

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
320100	610000	00000		\$1,372,719
ORG TOTAL				\$1,372,719

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
ORG TOTAL				\$0

GRAND TOTAL APPROPRIATION \$1,372,719

Subject of Board Letter:

Approval of FY 2014-2015 Service agreements with International Business Machines (IBM)

BY: 2015**FUND:** 10000

The use of Designations, as follows:

NAME OF DESIGNATION	ORG	AMOUNT

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<i>Informational</i>				
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ORG TOTAL				\$0

GRAND TOTAL ANTICIPATED REVENUE \$1,372,719

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<i>Informational</i>				
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<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
ORG TOTAL				\$0

GRAND TOTAL APPROPRIATION \$1,372,719